

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**HTCT-00-CC-MA-0253 OF 2005**  
*(Arising from HCT-00-CC-CS-0248-2005)*

**HACO INDUSTRIES (K) LTD**

**APPLICANT**

**VERSUS**

**DDUNGU W.F**

**RESPONDENT**

**BEFORE: THE HONOURABLE MR. JUSTICE F.M.S. EGONDA-NTENDE**

**RULING**

1. The applicant is a manufacturer under licence from Societic Bic of France, of Bic pens. Through a network of distributors and agents it sells the said Bic pens in Uganda. The applicant alleges that 72 cartoons of counterfeit Bic pens were impounded by the Special Revenue Protection Services. The applicant alleges that the said goods were being imported into Uganda by the respondent. The applicant filed an action in this court seeking, inter alia, an injunction against the respondent to restrain him or his agents and servants from importing, selling or offering for sale Bic pens not of the Applicant's manufacture and that 72 cartoons of counterfeit pens seized by Special Revenue Protection Services be delivered up for destruction.
2. The Respondent in his written statement of defence denies that he was the importer or dealer in the 72 cartoons of counterfeit Bic pens seized as alleged by the applicant. He states that he is the importer of pens but of other brands other than Bic pens. These include the PIANO, BEIFA and CRYSTAL. He denied any connection with the counterfeit pens seized as aforesaid.
3. The applicant seeks now a temporary injunction to issue to restrain the respondent from taking custody of, taking over, disposing of, or in any way have and deal whatsoever with

the 72 cartoons of counterfeit Bic pens now in the Custody of the Special Revenue Protection Services until final disposal of the Head suit or until further orders of this court. Secondly that this court order the detention or preservation of the said goods by the Special Revenue Protection Services until the final disposal of the head suit or until further orders of this court. The application was supported by an affidavit sworn by Mr. John Muthenga.

4. The hearing of this application proceeded *ex parte* as the respondent did not turn up at the hearing or file any papers with regard thereto, in spite of service of the application and notification of its hearing. Mr. Mutawe, learned counsel for the applicant, submitted that principally this application was about preservation of the status quo until the head suit is heard. He stated that the applicant wishes to preserve its market for genuine Bic pens in Uganda which would suffer immeasurably if counterfeit pens were sold in the same court. The balance of convenience lies with the applicant, the manufacturer and dealer in the said pens. As the respondent denied importing these pens, this is a question to investigated by evidence at the trial. The applicant did not manufacture these goods. And so there are counterfeit goods, manufactured in China. He prayed that in the interests of justice these goods be preserved until the matter is disposed of.
5. It is now well established that before a temporary injunction may be granted, the applicant must have an arguable case put forth, would be likely to suffer irreparable harm if the injunction is not granted, and in case of doubt, the balance of convenience should lie with the grant rather than the denial of the application. These three factors have been established in this case. On the pleadings an arguable case is made out. Sale of counterfeit Bic pens would irreparably injure the applicant's market as damages would hardly atone for such damage as may be inflicted by sale of counterfeit goods, especially those alleged to be of poor quality.
6. The application for a temporary injunction to issue against the respondent to restrain him, or his agents and servants, from taking possession and dealing in any way whatsoever, with the 72 cartoons of allegedly counterfeit Bic pens, currently in possession of the Special Revenue Protection Services, is allowed, and will subsist for a period of 4 months from the date hereof.

7. The application for a preservation order against the Special Revenue Protection Service is denied. The application does not show the particulars of this organisation, and whether it is a statutory organisation or not or its status in the law. I am not sure what its functions are, and whether or not it is part or independent of the Uganda Revenue Authority, the statutory board dealing with customed goods, which presumably would have the authority to impound goods of these nature. It is not a party to these proceedings. In those circumstances I am not inclined to make any orders purporting to bind it.
8. Costs of this application to abide the outcome of the head suit.

Dated at Kampala this 11<sup>th</sup> day of May 2005

**FMS Egonda-Ntende**  
**Judge**