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Anglo Fabrics (Bolton) & Anor V Mohamed Ssali- HCT-00-CC-MA-0057-2007 [2007] UGCommC  
29 (5 April 2007)

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**COMMERCIAL COURT DIVISION**

**HCT-00-CC-MA-0057-2007**

(Arising from HCT-00-CC-CS-0062-2007)

Anglo Fabrics (Bolton) Limited Applicants  
Ahmed Zziwa

Versus

Mohamed Ssali Respondent

**5 April 2007**

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. This is an application for a temporary injunction to restrain the respondent from removing a consignment of goods containing 964 cartons of soap bearing the applicants' trademark 'MEKAKO' from the possession and / or control of the Uganda Revenue Authority until the determination of the head suit. In addition this application seeks an order to stop the respondent from dealing in products bearing the trademark MEKAKO until the determination of the main suit. And that the respondent should be liable to pay to the Uganda Revenue Authority taxes, penalties and other dues including demurrage arising from the retention of the goods in question. The applicant further seeks that the costs of this application be provided for. The application is supported by an affidavit of Ahmed Zziwa, applicant no.2.
2. The application sets out 10 grounds upon which it is based. I shall not repeat them as they just constitute a narrative of the facts upon which this application relies. From what I can gather the applicants' application is grounded on the fact that there are the registered trademark proprietors of the trademark MEKAKO. It is asserted by the applicants that any dealing in the goods bearing this trademark would inflict upon the applicants irreparable harm as the goods in question will be presented as the applicants' goods whereas there are not.
3. The respondent opposes this application and has filed an affidavit in support of its position. The respondent accepts that he imported the said goods into Uganda but that at the time he did so, the trademark of the applicants, had expired. Secondly that he has no intention of selling the goods in Uganda as the goods are prohibited goods in Uganda, and he has now applied for re-export of the same out of Uganda.

4. It is not in dispute that the applicants are the owners of the trademark MEKAKO. This trademark registration expired on 10<sup>th</sup> September 2004, and was subsequently renewed on 9<sup>th</sup> May 2006, purportedly from the 10<sup>th</sup> September 2004. The trademark is in respect of the class of goods that the respondent has imported. Upon the oath of the respondent the goods in question bear the trademark MEKAKO. Whether the goods are counterfeit or not is not a question that can be settled on the affidavits before me, and perhaps it is not necessary to resolve the same at this stage.
5. What is important is for the applicant to establish a prima facie case that there is a serious question to be investigated. Secondly that if the temporary injunction is not granted the applicant may suffer irreparable harm. And in case of doubt, the court can consider the balance of convenience.
6. Mr. Fred Mpanga, learned counsel for the applicant submits that the first and second conditions have been satisfied for the grant of a temporary injunction, relying on both the affidavit in support, and the affidavit of the respondent which show that the goods in question bear the trademark MEKAKO, to which only the applicants have rights.
7. Mr. Wycliffe Birungyi, learned counsel for the respondent, submitted that the applicants had failed on all three prerequisites. At the time the goods were imported the trademark was not registered. Registration was only renewed in May 2006, and according to the law, it is only effective from the date of renewal, in spite of what is contained on the certificate of renewal. Secondly he submitted that the goods were prohibited goods in Uganda by the East African Customs Management Act. The respondent had no intention of selling them in Uganda, and had applied to re-export outside Uganda. He submitted that this application ought to be dismissed.
8. At the outset it is important to observe that it is not possible, indeed not desirable that the court at this stage engages in a discussion over the merits and possible final outcome of the plaintiffs' claim. But the plaintiff must be able to show that there is a serious question to be tried. I am satisfied that he has done so. In spite of the lapse in registration for a period the applicants are the registered proprietors of the trademark. The goods in question bear this trademark or name by the admission of the respondent. The goods in question are in this jurisdiction.
9. In fact the respondent through an annexure to the affidavit in opposition, addressed to the Executive Director of U.N.B.S. dated 23<sup>rd</sup> February 2004, the respondent acknowledges having stocks of, among other things, thousands of cartons of Mekako soap. This was well before the expiry of the applicants' trademark.
10. The applicants seek a permanent injunction in the head suit, to restrain the defendant from putting the goods in question on market here in Uganda, where the goods are and the jurisdiction into which the goods were imported. If this application fails, and the final suit succeeds, it is likely the resultant order would be nugatory, as the applicant would have suffered loss, that is more probable than not, irreparable and would not be atoned for by way of damages.
11. The respondent counters this argument with his claim that the goods in question are prohibited in Uganda, and he has no intention of selling the same in Uganda. He desires to re-export them, presumably to another jurisdiction. That may well be so, but the original intention was to sell the same in Uganda. That is why the respondent is in the first place seized of the goods in this jurisdiction. The goods, on the respondent's admission bear the same name or trademark as the trademark of the applicant for the same class of goods. Ordinarily the law would not allow him to deal in the same goods bearing a trademark belonging to another. Whether the respondent can deal with such goods by way of re-export is an issue that will be dealt with at trial and not at this interlocutory stage. The status quo must be preserved.
12. On a balance of convenience, I am inclined to grant the temporary injunction sought

by the applicant but on condition, that it will not last more than six months from today. Parties are directed to proceed with appropriate dispatch to trial of the head suit. Secondly, the applicants shall pay the costs of storage/retention of the said goods by Uganda Revenue Authority, for the currency of this order, should the head suit fail. 13. The costs of these proceedings shall abide the outcome of the head suit.