

**REPUBLIC OF UGANDA**

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

**COMMERCIAL COURT DIVISION**

**HCT-00-CC-CA-0013-2006**

L'OREAL  
APPELLANTS  
UNILEVER PLC

Versus

INTERCONSUMER PRODUCTS LTD  
RESPONDENT

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

**JUDGMENT**

1. The respondent applied to the Registrar of Trademarks for registration of two trademarks, SMOOTH & LOVELY, under no.28097 and NICE and LOVELY under no. 28192 on or about the 4<sup>th</sup> October 2005. The application was advertised in the Uganda Gazette, and the appellants commenced opposition proceedings to the same.
2. The respondent in due course filed counter statements which were served on the appellants. The appellants applied for extension of time to enable them gather all necessary evidence to file the required statutory declarations. The Registrar, without assigning any reason, did not respond to the appellants' applications, but on application of the respondent, set aside the opposition proceedings and granted registration of the trademarks applied for. The Registrar advised the appellants to appeal in case there are dissatisfied with the decisions he made. The appellants now appeal to this court.
3. The respondent was notified of this appeal but did not file any papers in response thereto. Neither did the respondent turn up for the hearing of the appeal, in spite

of service. The hearing proceeded in the absence of the respondent.

4. The decision of the Registrar that is appealed from, in respect of trademark no. 28097 is set out in the letter dated September 18<sup>th</sup> 2006 addressed to the counsel for the respondents, and copied to counsel for the appellants. It states,

‘Registration of Trademark No. 28097 “SMOOTH & LOVELY”

We are in receipt of yours dated 23/06/2006 requesting for dismissal of the opposition proceedings filed by M/S Sengendo & Company Advocates.

We agree with the grounds given for setting aside the opposition and state the following:

- (i) There has been non compliance with observance of time limits prescribed by the Trademarks Rules
- (ii) There has been non-compliance with filing the statutory declaration by Counsel for opposition proceedings contrary to the Rules.

It is hereby decided that the applicant’s prayer is granted and the Trademark is registered. The right of appeal is available to the opposition pursuant to S.20(7) of the Trademark Act.

The practice of non-compliance with date times set by law in opposition proceedings is not acceptable as it leads to miscarriage of justice and frustration of business.

Bisereko Kyomuhendo

AG. REGISTRAR GENERAL’

5. The Appellants set forth in its notice of motion four grounds of appeal but in effect they can all be summarised that the Registrar of Trademarks erred when he set aside opposition proceedings without first making a decision on the existing applications for extension of time by the appellants. At the hearing of this appeal counsel for the appellants reiterated what was contained in the notice of motion and supporting affidavit.
6. The decision of the Registrar of Trademarks was made in response to a written application by the respondent calling for the setting aside of the opposition proceedings in a letter dated 23<sup>rd</sup> June 2006. This letter was not copied to the appellants’ counsel. Before this letter was received by the Registrar there was already on record an earlier application for extension of time by appellants’

counsel dated 25<sup>th</sup> April 2006.

7. In these proceedings that largely proceeded by letters it is odd that the Registrar, without any explanation whatsoever chose to ignore the appellants' counsel's application for extension of time, and instead proceeded to hear the respondent's application that opposition proceedings be set aside for failing to comply with time standards without notifying the appellant of this application or hearing the appellants at all when the decision sought to be made was adverse to them. In so doing the Registrar violated the rules of natural justice by choosing to hear one party and not the other.
8. The Registrar may have been entitled, on hearing the appellants' application for extension of time, to find that the application had no merit. The Registrar has powers under Rule 101 of the Trademark Rules to grant, in appropriate cases, extension of time. But he must first entertain such an application, where one has been made, as in the instant case, and make a decision on its merits. This he did not do, and thereby committed a fatal error.
9. The decision of the Registrar leaves a lot to be desired. It makes no specific findings of fact. It refers to the rules in the most general manner without specifying what rule is being referred to or what rule was offended. The only occasion, in the decision appealed from, a specific provision of the law is referred to was in giving the appellant notice of his right to appeal. This is a very unsatisfactory state of affairs. What transpired for trademark no. 28097 is exactly what transpired for trademark no. 28192, with only varying dates.
10. For the above reasons I am satisfied that the Registrar acted in error in setting aside opposition proceedings with respect to the said two trademark applications. I order the reinstatement of the said trademark opposition proceedings, cancel the registration of the trademarks 'SMOOTH & LOVELY' and 'NICE and LOVELY', and direct the Registrar to hear the appellants' applications for extension of time for filing statutory declarations, and thereafter proceed as the law directs. I award to the appellant costs of this appeal.

Dated, signed, and delivered in Kampala this 31<sup>st</sup> day of May 2007

FMS Egonda-Ntende  
Judge