

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMMERCIAL COURT DIVISION**

**HCT-00-CC-CS-258-2008**

**MANDELA AUTO SPARES:.....PLAINTIFF**

**-Vs-**

**MARKETING INFORMATION SYSTEMS:.....DEFENDANT**

**BEFORE: HON MR. JUSTICE ANUP SINGH CHOUDRY**

**RULING**

This is a written Application dated 21<sup>st</sup> January 2009 addressed to the Registrar that the Judge should disqualify himself from this case; the letter was brought to my attention this morning.

The matter came before this court on 23<sup>rd</sup> January when it was fixed for scheduling on 29<sup>th</sup> January so that the case could be disposed off before March this year.

On 23<sup>rd</sup> January Mr. Kavuma Terence counsel for the Defendant invited the Judge to disqualify himself as he felt that the Judge had made up his mind by having made certain observations and comments on the points of law raised during the Application for injunction that was granted on

27<sup>th</sup> October 2008 in favour of the Plaintiffs which is now subject of appeal in the Court of Appeal.

The comments made by me were simply to assist the parties by drawing their attention to the fact that the fixed term agreement dated 1<sup>st</sup> January 2005 could only be terminated under Clause 2 of the Agreement which referred to obligation in clause 5 and breaches thereof gave rise to remedies under Clause 6 when the parties inter-alia could then terminate the agreement as per clause 6(c) by giving 14 days notice, I am sure the Defendants would have taken instructions from their clients on this point, or advised them accordingly.

The Plaintiff's counsel opposed the Application on the 23<sup>rd</sup> January and today and suggested that the Judge should continue. The Counsel Mr. Siraj Ali rightly submitted that there was no conflict of interest or bias and that another Judge would only delay matters and it would cause great prejudice to the Plaintiff who have already suffered loss and delay that would exacerbate the damages.

It is a situation where both parties are not in agreement jointly to move to another Judge. On 23<sup>rd</sup> January I refused to disqualify myself because to do so would have pleased the Defendants but not the Plaintiff and there were no grounds to disqualify myself. I therefore ordered that the scheduling should go ahead on 29<sup>th</sup> January.

On 21<sup>st</sup> January 2009 the Defendant's lawyers had written to the Registrar at that time the letter had not come before me, the letter set out the grounds on which the Judge ought to disqualify himself.

The Defendants very strongly feel uncomfortable and the court must ensure that justice is not done but must seem to be done when one of the parties expresses concern even if the concerns are unfounded.

In this case there are no grounds to disqualify myself as a presiding Judge, but it is important that all the parties should feel happy and in those circumstances, I have no problem in disqualifying myself from hearing this case; although undoubtedly it will cause some very considerable delay

and prejudice to both parties. I am therefore asking the Registrar to allocate this file to another Judge.

**Anup Singh Choudry**

**Judge**

**29/01/2009**