THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT - 00 - CC - MA - 527 - 2013

TRUST FOR AFRICAN'S ORPHANS UGANDA ::::::::::::::::

PLAINTIFF

VERSUS

LYDIA MBANZA ::
DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

Trust For Africa's Orphans Uganda, hereafter referred to as the Applicant, brought this application for a temporary injunction against Lydia Mbanza, referred to in these proceedings as the Respondent.

The Applicants quest was for orders restraining and preventing the Respondent from possessing and controlling a domain name, website, email and all internet based reference to taou.ug.org domain.

The reasons for the injunction was that the Respondent had acquired it unlawfully and to the detriment of the Applicant.

The dispute can be understood better by looking at the background that brought the Applicant into being. The Applicant was born in 2011 to

mobilize funds to help the disadvantaged, through relief funding, exhibitions, meetings, lectures, classes, seminars, workshops, courses for purposes of building the capacity.

The Applicant was registered on the 24th November, 2011 and issued with a Certificate of Registration and Incorporation under the Non-Governmental Organisation Registration Act.

Its Constitution dated 29th July, 2011 was registered in February 2012.

There were two promoters, namely; Christopher Bumpenje and Mbanza Lydia, the Respondent in this matter. It was witnessed by Brian Kabaninza.

Somewhere in the course of the running the affairs of the Applicant, the Respondent and others involved the Applicant disagreed.
An attempt was made to dismiss the Applicant. They also discovered that the website which they thought was registered in the Applicant's name, was actually in the Respondent's names.
The Applicant then filed the application for an injunction.

When the application for a Temporary Injunction came up for hearing, counsel for the Respondent raised a preliminary objection. He submitted that the purported suit from which the application was based was non-existent in as much as, it was filed without sanction or authority.
He submitted that in as far as he was concerned, the Respondent and Mr. Bumpenje was the first and only members of the Applicant.

He further submitted that the Respondent and Mr. Bumpenje were the only members of the Board of Trustees and that they derived that Status from Article 8 of the Constitution of the Applicant.

Article 8.2.1 provides for the Board of Trustees as follows;

> *"There shall be a Board of Trustees, numbering not less than three (3) and not more than (7)."*

It went on to designate the founder members as such members of the Board of Trustees in this manner;

> *"The first Board of Trustees shall be constituted by the founder members"*

As for the appointment of more members, the constitution provided;

> *"and thereafter new trustees will be appointed by the existing Board of Trustees as the need shall arise".*

The members of the Board of Trustees would hold office for a period of two (2) years but were eligible for re-appointment for three more terms.

There were no minutes on record showing the appointment of other Board members, but Annexture "A" attached to the Affidavit in rejoinder, deponed by the Respondent contained a special Resolution and minutes leading to that resolution. Interestingly, one of the members of Trustees and also the treasurer was Mr. Christopher Bumpenje.

If Bumpenje and the Respondent were the only members of the Board of Trustees, how then did he find himself seated amongst strangers to the applicant and passing resolutions. The only explanation is that along the way, the two founder members had expanded the Board as was provided in article 8(2) of the applicant constitution.

The resolution to take the Respondent to court if negotiations in respect of the website failed is on record dated 7th June, 2013 and in "B" of attachment to the affidavit in Rejoinder. The minute 06/09/17/04/2013 headed Project Coordinator TAO UK made it clear that the Respondent had been a subject in an earlier meeting. The last paragraph was;

> *"The members also resolved that the NGO Board should be notified in writing about the termination of M/S Lydia Mbanza as the Project Coordinator and also terminate her membership of TAOU.*

It is not necessary in the application before court now to go into whether the said termination was lawful. Suffice it to say here that, the foregoing clearly show that there was a board of Trustees in existence and that a resolution to lodge the suit and therefore the application was arrived at in a Board meeting.

It is therefore my finding that the suit and subsequent application were sanctioned.

Turning to the application for an injunction, such an injunction is given with the following in mind.

The preservation of the status quo, **Erinford Properties Ltd V Chesire County Council R** [1974] 2 ALL ER 448. It is also given when unreparable damage is evident.

This must be propped up with a prima facie case with a high probability of success.

Lastly, where the court is in doubt, it is best it decides the application on the balance of convenience **EA Industries V Trufoods** [1972] EA 420.

The Applicant has not fulfilled the condition that it will suffer irreparable damage that cannot be atoned in damages. The Respondent incapacity in that regard was not shown. It was the duty of the Applicant to show that if the respondent was to fail at the trial, the Applicant would not be able to recover the loss from the Respondent. The sums involved were not disclosed.

Furthermore, in the prayers at the end of the plaint, the Applicant seeks general damages for loss of use of its brand on its website, for service interruption from March 2013 todate, General damages for Denial of use of Website from March 2013 to date, General damages for loss of donor confidence and donor attribution, General damages for loss of donations and grants, and General damages for Reputational damage. The claim for damages is therefore wide and open to the Applicant. Should it be successful, the resultant award should be able to atone any damage suffered. Of course the burden to prove the claim of damages will still be born by the Applicant.

Lastly, the pleadings availed to the court before and during the hearing of the application, have not fully cleared the doubt that was raised as to

the manner the website was registered. The instructions to register were not availed. In the premises, the balance of convenience would only be to preserve the existing position, **EA Industries V Trufoods** [1972] EA 420.

That being the case, this application for an injunction is dismissed with costs to abide the final decision.

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David K. Wangutusi

JUDGE

Date: 24 - 10 - 2013