

THE REPUBLIC OF UGANDA

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

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CIVIL SUIT NO. 286 OF 2010

OKIDI RICHARD..... PLAINTIFF

10 **VERSUS**

1. MTN (U) LTD

2. MTN GROUP MANAGEMENT SERVICES (PTY) LTD

..... DEFENDANT

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BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

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Background

The Plaintiff filed this suit against the Defendant for copyright infringement and seeking for cancellation of registration of ME 24/ ME 24 trademarks, business name, and for general, exemplary and aggravated damages, delivery and account for profits.

The Plaintiff denied the claim contending interalia that they have never solicited any computer persons or software applicator from the Defendants and have no contractual or other relationship with the Defendants.

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When the suit was called for hearing on 28.05.15, Counsel for the Defendants raised a preliminary objection. He contended that the suit was not properly before court because when the amended plaint was filed on 29.11.11, there was under payment of filing fees.

35 Referring to paragraph 4 (p) of the plaint that sets out the monetary claim and annexure f3, he argued that the amount claimed by the Plaintiff is Shs. 7,800,000,000/-. The amount is

derived from the amount to be charged per subscriber or number of subscribers that total to 1,000,000/- subscribers.

5 Counsel pointed out that only Shs. 150,000/- was paid as filing fees, yet the Shs. 7,800,000,000/- would attract about Shs. 70,000,000/-. That therefore, the plaint was filed in breach of 0.7 r II (b) and (o) C.P.R and ought to be reflected.

10 He also referred to P.11 of the witness statement where Shs. 8,610,517,057/- is claimed and asserted that the requisite fees ought to have been paid but were not and therefore the suit is incompetent; unless the Plaintiff is required and is given more time to pay and it pays.

It was prayed that the suit be dismissed with costs.

15 In reply, it was submitted by Counsel for the Plaintiff that the cause of action is not a liquidated sum since the matter is purely about copyright infringement. The remedies sought and the numerical figures put in the prayers are mere proposals to court. What should be awarded to the Plaintiff and the documents referred to are for evidential purposes.

20 Further that, the claim in contention is a growing claim and the Plaintiff was proposing a fair compensation of the general damages and not special damages.

25 In rejoinder, Counsel for the Defendant insisted that the sum claimed can be seen from the pleadings. He insisted that the claim is invalid as the amended plaint shows the number of subscribers to be 1,000,000 and reiterated earlier prayers.

The issues to be determined is:-

- 1) Whether or not the plaint is incompetently before court for payment of insufficient fees
- 2) What remedies are available to the parties?

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Whether insufficient fees were paid:

Under S.26 of the Judicature Act (Court fees, fines and deposits) rules 2S1 13-3 fees have to be paid and are deemed paid when paid in full – Refer to the case of **Lawrence Muwanga Stephen vs. Stephen Kyeyune SCCA 12/01** and **Namatovu Susan vs. Baguma Augustine CS 1073/2013**.

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And per S.97 of the C.P.A and rule 6 of the above described rules, court has discretionary powers to order for the payment of deficient court fees for any document which by law is required to be paid; and upon payment, the document in respect of which the fees is payable shall have the same force and effect as if it had been paid in the instance. – See the case of

5 **Lawrence Muwanga (Supra).**

In the present case, the Plaintiff seeks cancellation of Trademarks and Business Name Registration of ME 24/ME 24, general, exemplary and aggravated damages, delivery and account of profits for copy right infringement.

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The value of the subject matter was not stated.

In paragraph 4 (p) of the plaint, the Plaintiff offered the Defendant a discount of Shs. 800/- for the original figure of Shs 7,800/- for the first year, to encourage the Defendant to pay, but the offer was declined.

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The Plaintiff also seeks damages already referred to at the rate of Shs. 7,800/-.

The amount indicated in the table at the top of Page 11 of the witness statement is a proposal in terms of general damages and lost earnings.

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This court finds that, the remedies sought by the Plaintiff can only be properly valued after hearing evidence from both parties. The figure of one million subscribers has also got to be proved and reasons advanced as to why the rate of Shs 7,800/- is being applied.

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In determining the fee of Shs. 150,000/- paid as court fees, the Registrar took into account that the claim is not liquidated (based on the sum claimed as special damages).

The preliminary objection cannot therefore be sustained and is hereby overruled. The case should be heard on merit. Costs will abide the outcome of the main suit.

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FLAVIA SENOGA ANGLIN

JUDGE

35 **19.08.15**