

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)  
MISCELLANEOUS APPLICATION NO. 688 OF 2018  
(ARISING FROM CIVIL SUIT NO. 653 OF 2018)**

**PASTIFICIO LUCIO GAROFALO S.P.A.....APPLICANT**

**VS**

**QUICK SALERS (U) LTD.....RESPONDENT**

**BEFORE HON. MR. JUSTICE RICHARD WABWIRE WEJULI**

**RULING**

This Application is brought by Chamber summons ex parte under S.79 of the Trade Commented [WU1]: Whether NM or CS- verify from file and correct by slip rule. Reference to chamber summons Marks Act, Sections 22 & 98 of the CPA and S 33 and 38 of the Judicature Act for here in inconsistent with, reference to Notice of Motion at line 24 orders that;

the Respondent permits the Applicant to enter upon the Respondents business premises, stores, warehouses or such other parts thereof as may be necessary for the purpose of inspecting all

goods and items sold and branded under the trademark SANTA LUCIA, documents, materials or articles relating to the infringement of the Applicants trademark and further for the purpose of moving into the custody of this court or any other place this court may deem fit all infringing products, materials or articles and documents relating to the importation, sale and distribution of the infringing products. The Applicants also seek for costs for this Application to be provided for.

The grounds for the Application are in the Notice of Motion and also amplified in the Affidavit in Support of the Application deposed by Muse Afewerik, the Applicant Company's country manager, in which he deposes that the Applicant is the registered and lawful proprietor of the Saint Lucia trade mark in respect of all goods in class A under the Trademarks Act of Uganda.

He deposes that the Respondents get-ups and mark are so identical with those of the Applicant as to be likely to deceive and cause confusion in the course of trade in relation to the goods.

That as a result of the unauthorized infringing activity, the Applicant has lost market share, reputation and revenue. The deponent avers that the Respondent is in possession of infringing materials which they might get rid of to conceal evidence.

In his written submissions, counsel for the Applicant submitted that the three essential preconditions for grant of an Anton Piller order had been satisfied and that the Application therefore passes the test for grant of an Anton Piller order. He cited the case Uganda Performing Rights Society Ltd V Fred Mukubira HCMA 818/2003 in which the three preconditions were spelt out to illustrate that the Applicant's case was on all fours with the principles.

After I have carefully considered the foregoing and the laws, I am satisfied that the Applicant is the owner of the TM Santa Lucia. On the court file, a certificate of registration and renewal in

Uganda is attached to the Affidavit in Support of the Application as proof that the Applicant is the registered proprietor of the Trade mark in class 30 and therefore has a strong prima facie case of infringement. The Applicant has attached photocopies of the photographs of the products outer packaging boxes and of the packets of the same as well for both the Applicant's and the Respondents respective products.

Section 79(2) of the TMA mandates a TM owner may apply to the court ex parte and the court may make an order for the inspection of or removal from the infringing person's premises or control of the right-infringing materials which constitute evidence of infringement by that person. The objective of this provision is to enable procurement of evidence of infringement by inspecting and removing the infringing materials and hence the rationale for allowing ex parte Application 55 under the section and in such circumstances.

In the event, the Application succeeds and I order;

- i. the Respondent to permit the Applicant to enter upon the Respondents business premises, stores, warehouses or such other parts thereof as may be necessary for the purpose of inspecting all goods and items sold and branded under the trademark Santa Lucia, documents, materials or articles relating to the infringement of the Applicants trademark and
- ii. the Respondent to permit the Applicant to enter upon the Respondent's business premises, stores, warehouses or such other parts thereof as may be necessary for the purpose of moving into the custody of this court or any other place this court may deem fit all infringing products, materials or articles and documents relating to the importation, sale and distribution of the infringing products.

The Applicant shall enter any of the said premises in the presence and company of a bailiff of the High Court and a designated inspector of 70 Trademarks designated in accordance with the Trademarks Act, 2010.

The bailiff and Trademarks inspector shall make an inventory of all the infringing materials.

The infringing materials shall be removed from the Respondents premises and kept with the bailiff at the Applicants cost and dealt with in such manner 75 as this court may deem fit in further proceedings in the main suit.

The costs for this Application shall abide the outcome of the main suit.

Delivered this 25<sup>th</sup> day of January, 2019.

Richard Wejuli Wabwire

JUDGE