

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

MISCELLANEOUS CIVIL APPLICATION No. 0347 OF 2021

(Arising from Civil Suit No. 0148 of 2021)

ZEENODE LIMITED

..... **APPLICANT**

VERSUS

1. THE ATTORNEY GENERAL }

2. MAKERERE UNIVERSITY }

3. OKUONZI JOHN }

..... **RESPONDENTS**

Before: Hon Justice Stephen Mubiru.

RULING

15a. Background.

The applicant sued the respondents jointly and severally for the recovery of shs. 6,264,890,000/= due under a framework contract, a permanent injunction, general and special damages for breach of fiduciary duties, inducement of breach of contract, copyright infringement and passing off, interest and costs. The applicant's claim is that while students of Telecommunications Engineering at Kyambogo University from the year 2006 - 2010, six out of the seven shareholders of the applicant invented a University Management Computer system they named "E-Kampus." The applicant subsequently developed and registered copyrights in respect of several software packages styled as "Zeevarsity" and "Zeepay" which constitute components of a digital ecosystem styled as the Academic Information Management System (AIMS). Sometime in the year 2017, it was recommended that the University Management Computer system be adopted by all public universities and self-accounting tertiary institutions.

The recommendation was adopted and communicated as a government policy on 4th July, 2017. A framework contract dated 18th August, 2018 was executed between the applicant and the government of the republic of Uganda for the implementation of that policy. In that agreement, while acknowledging the applicant's copyright, government reserved the right to purchase its source code from the applicant but in the meantime the applicant availed government with the

source code for safe custody. The contract also retained the applicant for making up-grades, maintenance and improvements of the system for three years, ending on or about 10th June, 2020. The applicant thereafter invoiced the 1st respondent for the sum claimed which demand was rejected by the 1st respondent. The 1st respondent instead took measures to extend the use of the Academic Information Management System, which the applicant contends is a violation of its copyright. Furthermore on 15th December, 2020 the government entered into a one year contract with the applicant for the maintenance and support of AIMS instead of negotiating an outright purchase. The 2nd respondent has gone further by correspondences exchanged with the 1st respondent during or around the month of February, 2021 to express an interest in developing its own in-house AIMS 2.0 by re-building “E-Kampus” claiming the applicants have no copyright over the acronym AIMS. The applicants contend AIMS 2.0 connotes an upgrade of their AIMS, which is an acronym attributed to the applicants by repute. The implication is that the 2nd and 3rd respondents have unlawfully accessed the applicant’s source code by which they now will be able to up-grade the software, hence the application.

b. The application.

Application is made under section 33 of *The Judicature Act*, section 98 of *The Civil Procedure Act*, sections 4, 5 and 45 of *The Copyrights and Neighbouring Act*, and Order 41 rules 1, 2, 3 and 9 of *The Civil Procedure Rules*. The applicant seeks a temporary restraining order against the respondents jointly and severally, preventing them from directly or indirectly infringing the applicant’s copyright and passing off the their own software as constituent parts the applicant’s digital ecosystem known as the Academic Information Management System (AIMS), until the final disposal of the main suit.

It is the applicant’s case that they are the owners of copyrights of software associated with and including the name Academic Information Management System (AIMS), which is a digital ecosystem currently employed in the management of multiple public universities and self-accounting tertiary institutions. Pending the disposal of the main suit, the applicant has obtained information that the 2nd respondent has expressed an intention of developing its own in-house

Academic Information Management software under the brand name "AIMS.20" to replace the applicant's AIMS.

5 The applicant contends that the 2nd respondent is already soliciting funds from the 1st respondent to enable it realise that goal with the help of the 3rd respondent, which when achieved would constitute an infringement of the applicant's copyright to the extent that the acronym "AIMS 2.0" connotes an up-grade of the applicant's AIMS. Embedded in AIMS is the applicant's software styled as "Zeevarsity" and "Zeepay," the intended upgrade of which none of the respondents has sought the applicant's licence or permission. That the 2nd respondent is embarking on an upgrade is suggestive of the fact that the respondents have colluded to gain unauthorised access to the applicant's source code that was entrusted to the 1st respondent for custody. If the respondents are not restrained, the main suit would be rendered nugatory and the applicant stands to suffer irreparable loss.

15c. Affidavits in reply:

The Permanent Secretary Ministry of Information, Communication, Technology and National Guidance, Mr. Bagiire Vincent Waisswa, in his affidavit sworn on behalf of the 1st respondent avers that the application is based on falsehood. "E-Kampus" was developed during the year 2012 by students of Kyambogo University under the stewardship of their lecturer, the 3rd respondent with the oversight of the University Council. In the year 2014, the university registered its copyright over that integrated and unified computerised Information Management System, "E-Kampus." The system was piloted for the next three years or so, and following its success, government as a matter of policy on 4th July, 2017 rolled it out to the rest of the public universities and self-accounting tertiary institutions. The government later retained the services of the applicant, as a representative and nominee of Kayambogo University, to develop "E-Kampus" into "AIMS" and then implement it in all self-accounting tertiary institutions. The applicant has since taken steps in an attempt to appropriate AIMS as its property including the registration of copyrights over "Zeevarsity" and "Zeepay" and issuing a threat to switch it off altogether. Issuance of the temporary injunction order sought will cause irreparable damage to the respondents, stifle innovation in that area and effectively confer a monopoly upon the applicant.

The University Secretary and Accounting Officer of the 2nd respondent, Mr. Yusuf Kiranda, on his part averred that the suit against the 2nd respondent is frivolous and vexatious. The Academic Information Management System now in place was developed under the initiative of Ministry of Information, Communication, Technology and National Guidance, as an improvement of “E-Kampus” and therefore it is not the property of the applicant. The applicant’s copyright is in respect of two Integrated Payment Information Management Software Applications; “Zeevarsity” and “Zeepay.” In the modification of “E-Kampus” into AIMS, the applicant worked as part of a team comprising staff and former students of Kyambogo University involved in the development of “E-Kampus.” The name was changed to AIMS to delink it from Kyambogo University which had a copyright in respect of “E-Kampus” yet AIMS was to be rolled out to all other public universities and self-accounting tertiary institutions.

He avers further that the 2nd applicant has only rights of access to the software and not to its source code. In December, 2020 the applicant shut down the entire programme in a bid to force government to renew its three year contract, causing the 2nd respondent and other public universities and self-accounting tertiary institutions loss of revenue. That experience prompted the 2nd respondent to consider developing its own in-house Academic Information Management System. That will be done independent of the applicant’s “Zeevarsity” and “Zeepay” source code to which the 2nd respondent has no access. A temporary injunction would unjustifiably stifle the 2nd applicant’s innovation, in execution of its statutory mandate.

In his affidavit in reply, the 3rd respondent avers that he is the Director of Information and Communications Technology (ICT) at Kyambogo University. By virtue of that position, he is mandated to develop, deploy and support innovations, quality and sustainable ICT solutions and service that meet the changing learning, teaching, research and management needs of the university. He was appointed by the university to engage in the development of both “E-Kampus” and its subsequent evolution into AIMS. There was no copyright infringement involved in both processes and the application is only meant to stifle innovation and research.

d. Affidavits in rejoinder:

In his affidavit in rejoinder, Mr. Muzaaya Joshua, one of the applicant's directors avers that most of the statements contained in the affidavits in reply constitute hearsay. The development of AIMS was not based on "E-Kampus" and adoption of the acronym AIMS 2.0 is indicative of the fact that the 2nd respondent's intended in-house Academic Information Management System is not an innovation but rather an up-grade of the applicant's AIMS. None of the applicant's officers involved in the development of AIMS is an employee of Kyambogo University. The source code of "E-Kampus" was written by the directors of the applicant while students and Kyambogo University only provided an enabling environment. The 3rd respondent is neither trained nor skilled in writing code. The 3rd respondent in his correspondence to the Vice Chancellor of Kyambogo University though has admitted having developed AIMS 2.0. The 2nd respondent's University Council has already put in place a task force and coordination committee which are generating a budget and work plan to be presented to the 1st respondent. The 2nd respondent has indicated that it will take it a minimum of five months to develop its own in-house AIMS. The restraining order is intended to prevent an infringement of the applicant's copyright as well as government from recanting its expressed policy, in accordance with which the applicant has already acted.

e. Submissions of counsel for the applicant.

The application is premised on section 45 of *The Copyrights and Neighbouring Act*. The applicant needs to prove a *prima facie case*, irreparable injury and balance of convenience. The applicant has filed a suit against infringement in which it seeks a permanent injunction, order for payment of over 6.42 billion shillings outstanding from the 1st respondent for the continued use of the application, a declaration that the 1st respondent is contractually bound to purchase the applicants' source code under the framework contract. The claim is based on a written contract, which vests the rights in the applicant. In para 7 of the affidavit in support the applicant has presented a certificate of copyright registration.

As regards the likelihood of irreparable injury; the applicant has both economic and moral rights. It has expended an immeasurable amount of effort and skill. The second respondent is undertaking

- a process of imitating, reproducing and upgrading the software. There is a passing off of AIMS ecosystem this is to be found in annexure "D." The consumers of the system are defined. It is the only programme and the market is fixed. AIMS is not only descriptive but is definitive. The damage is that it will injure the image, the goodwill and income of the applicant. The letter of 4th July, 2017 to the Secretary to the Treasury expressed an intention to replace the applicant's system with AIMS 2.0, yet AIMS is used in all public universities and self-accounting tertiary institutions as a matter of government policy. In attachment "D" it was implemented on the basis of government policy. There are attempts to integrate it in private universities.
- 10 Section 23 of *The Copyrights and Neighbouring Act* is about the brand value. The respondents are attempting to mimic and sell it to those who consume the service. The developers were students, who now are the applicants. The market is within the higher institutions sector. Moral rights are the right to acknowledge authorship.
- 15 As regard the balance of convenience, it is in favour of the applicant. The supplementary affidavit has annexure "A" written by a contract party. It will take a minimum of five months and therein is a request of the extension of the applicant's contract. They are asking for maintenance of the *status quo* to continue. There are steps already taken towards stopping or removing the programme. Attachment "C" to the affidavit in rejoinder proves so. If the respondents are not stopped, the
- 20 activities of the respondents are likely to be more disruptive. Only one of the users, the 2nd respondent, is using it disruptively. The respondents have nothing to lose. Students are studying remotely on the programme. Article 26 of *The Constitution* protects the sanctity of property. The source code was given in trust in the respondent which has been breached.
- 25 f. Submissions of counsel for the 1st respondent.

There is no *prima facie* case since the applicant's case is speculative. It is based on an expressed intention to develop an in-house software. There is no determination yet that that is the direction that will be taken as indicated in annexure "D" and the one attached to the supplementary affidavit

30 in rejoinder. The 1st respondent has not taken steps towards realisation of the idea. There is nothing imminent. An idea is not an imminent danger. The 1st respondent will subject it to a highly

bureaucratic process which will take considerable time for developing it from an idea to reality. It is also subject to the budgeting process.

5 The damage is compensable. Para 4, 5, 6, 7, 8, 9, 16 of the affidavit on reply prove so. AIMS was developed by government. Para 12 shows that the system began as "E-Kampus." Para 19 and 20 show that the applicant only remodelled it and the 1st respondent has paid for setting it up. The applicant was contracted to offer a service, which is compensable. The damages can be assessed. The moral rights can be quantified. The balance of convenience is in favour the 1st respondent. The 1st respondent has not taken steps to disrupt AIMS. The system should be kept running. The
10 applicants want to monopolise the system through blackmail. AIMS is not synonymous with the applicant.

g. Submissions of counsel for the 2nd respondent.

15 The applicants do not have a *prima facie* case since the 2nd respondent has no contract with the applicant. The applicant's contract with the 1st respondent has since expired. They purely have a maintenance contract for less than a year. The 2nd respondent wants to develop an in-house system. There is no evidence that the 2nd respondent is adopting aspects of the applicant's programme. The application is speculative. The threat is speculative. The applicant's maintenance contract expires
20 in June this year. The injunction would be an indirect extension of the contract. They also seek to restrain the respondent's innovation. The 2nd respondent has no access to the applicant's source code. It is the 1st respondent who has it. All their claims are compensable. The balance of convenience is in favour of the 2nd respondent. The applicant can't be trusted to run the system. They indicated willingness to suspend its operation. An injunction would grant them monopoly.
25 The injunction would prolong the uncomfortable relationship.

h. Submissions of counsel for the 3rd respondent.

30 The applicant has not made out a case against the 3rd respondent. "E-Kampus" is not AIMS. This is a question of fact which has to be proved in evidence. The applicant's source code is entrusted to the 1st respondent. "E-Kampus" is not similar to their registered zee-codes. They have quantified

the claim in the suit and therefore they can be compensated in damages. In para 9 of the plaint, there is a claim of general damages. The court has power to assess the damage suffered by the applicant. As regard the balance of convenience, the 3rd respondent is engaged in software development as part of his duties to the university. An injunction will affect innovation and interfere with the progress of integration.

i. Submissions of counsel for the applicant in reply.

Order 41 r 1 of *The Civil procedure Rules* can be invoked on basis of a threat. Court should disregard the submissions on “E-Kampus.” Clause 33 of the agreement superseded previous arrangements. A respondent cannot take the liberty to offend the contract. The 3rd respondent was a partner and director and contact person of the applicant named in the contract. He carried the source code to Mr. Bagiire. Annexure “C” last paragraph indicates that they have already developed an improvement of AIMS. The 3rd respondent abused his status as director of the applicant and Head of department of a university. The over 6 billion shillings demanded is for payment of arrears of fees agreed upon in clause 5 of the contract. The alleged inconvenience is contrary to what the Vice Chancellor wrote. The applicant cannot shut off their programme in five months. The respondents will not be ready with a replacement in five months so there will not be disruption if the *status quo* is maintained. Kyambogo University is using AIMS not “E-Kampus” which was customized to Kyambogo. AIMS is an ERP (a system of integrated software applications).

j. The decision.

Applications for interlocutory injunctions pose a dilemma for Intellectual Property Law and practice as they require a court to assess the parties’ submissions and make decisions before all the facts are ascertained and all issues are thoroughly argued. Their stated principal purpose is to maintain the *status quo* between the parties until their rights can be finally adjudicated and determined. The overriding objective of injunctive relief is to ensure that intellectual property rights infringements cease as soon as possible. Interlocutory injunctions are thus intended to prevent imminent infringements of intellectual property rights, or to order the cessation of effective

infringements, on a provisional basis, in particular where any delay would cause irreparable harm to the rights-holder. This is mainly in cases when it is unlikely that the rights-holder will be able to recover damages, thus causing irreparable harm to the rights-holder.

5 A standard four-part test is applied in deciding whether a party is entitled to an interlocutory injunction: (i) whether the applicant has a *prima facie* case against the respondents; (ii) whether the applicant will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; (iii) whether the threatened injury to the applicant outweighs the threatened harm the injunction might inflict on the respondent; and (iv) whether the granting of a preliminary
10 injunction will disserve the public interest.

i. Whether the applicant has a *prima facie* case against the respondents.

First, a preliminary assessment must be made of the merits of the court case that has been filed
15 against those alleged to have infringed Intellectual Property rights, to ensure that there is a “serious question to be tried.” one of the criteria to be applied when considering whether or not to grant a temporary injunction is disclosure by the applicant’s pleadings, of a “serious triable issue,” with a possibility of success, not necessarily one that has a probability of success (see *American Cyanamid v. Ethicon* [1975] AC 396; [1975] ALL ER 504; *Godfrey Sekitoleko and four others v. Seezi Peter Mutabazi and two others*, [2001 –2005] HCB 80 and *Nsubuga and another v. Mutawe* [1974] E.A 487). There is no need to be satisfied that a permanent injunction is probable
20 at trial; the court only needs be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. A serious question is thus any question that is not frivolous or vexatious. As long as the claim is not frivolous or vexatious, the requirement of a
25 *prima facie* case is met.

The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried, and that there is at least a reasonable chance that the applicant will succeed at trial. The applicant needs to show only a reasonable likelihood of success
30 on the merits. The applicant’s burden on this part of the test is relatively low, and in most cases an applicant will be able to show that there is a serious question to be tried. The applicant is required

to provide reasonably available evidence to satisfy the court with a sufficient degree of certainty that the applicant is the rights-holder and that his or her rights are being infringed, or that such infringement is imminent. The applicant must show a strong probability that the feared conduct and resulting damage will occur.

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Although the merits of the parties' respective cases and their relative strengths are not to be considered at this stage, the court should bear in mind that a party must show two elements to prevail on a claim of copyright infringement: (1) ownership of a valid copyright and (2) copying of the protected work by the alleged infringer. Where the applicant's ownership and the validity
10 of its copyright is hotly contested for purposes of a motion for interlocutory injunction, just as it is in the application at hand, the applicant's likelihood of success depends upon its ability to prove that the respondents have copied or that there is an imminent danger that they will copy its copyrighted source code.

15 Copying is generally established by showing that the respondent had access to the copyrighted work and that the offending and copyrighted articles are "substantially similar." Substantial similarity refers only to the tangible expression of the applicant's concept, not the underlying idea itself; mere identity of ideas expressed by two works is not substantial similarity giving rise to an infringement action since ideas and concepts cannot be copyrighted. An author can claim to own
20 only an original manner of expressing ideas, not the ideas themselves. Some ideas admit of only a limited number of expressions. When there is essentially only one way to express an idea, the idea and its expression are inseparable and copyright is no bar to copying that expression.

i. Ownership of a valid copyright.

25

A created product that requires significant mental activity becomes an intellectual property and can be protected against unauthorised duplication. A copyright protects a particular tangible expression of an idea. According to section 5 (1) (e) of *The Copyright and Neighbouring Rights Act, 19 of 2016*, computer programmes and electronic data banks and other accompanying
30 materials are part of works that are eligible for copyright. Under the Act, "Computer programme" means a set of instructions expressed in any language, code or notation, intended to cause the

device having an information processing capacity to indicate, perform or achieve a particular function, task or result (see section 2 thereof). Similarly, Article 10 (1) of *The Agreement on Trade-related Aspects of Intellectual Property Rights* (TRIPS) states that "computer programs, whether in source or object code, shall be protected as literary works under *The Berne Convention* (1971)."

5

Copyright is created in a work once it is fixed into a tangible medium of expression. Copyright protection for a computer program extends to all of the copyrightable expression embodied in the program. In the context of software, a copyright could protect a source code, object code and user interfaces. Source code is the set of statements and instructions authored using a programming language (e.g., C++, PERL, Java etc.). Source code is comprehensible to a person familiar with programming language but requires conversion into object code before it is comprehensible to a computer or other electronic device. Copyright attaches to data selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The right is obtained automatically at the time the expression is created, such as when the source code is written. Copyright is automatic from the moment the computer program represents in a tangible form such as ROM, disk, Magnetic Tape, etc. Copyright law though does not protect the functional aspects of a computer program, such as the program's algorithms, formatting, functions, logic, or system design.

20 It is an elementary principle of copyright law that an author has no copyright in ideas but only in his expression of them. The law of copyright does not give him or her any monopoly in the use of the ideas with which he or she deals or any property in them, even if they are original. His or her copyright is confined to the literary work in which he or she has expressed them. "The ideas are public property, the literary work is his own" (per Justice Thorson P. in *Moreau v. St. Vincent*, 1950 CanLII 248 (FC), [1950] Ex. C.R. 198).

30 For example in *Baker v. Selden*, 101 U.S. 99 (1879), the applicant obtained a copyright for a book on the art of bookkeeping he had written. He sued the respondent, an author of another book on the subject, for copyright infringement. He claimed respondent the respondent had infringed the copyright by using account books with columns and headings similar to those explained in the copyrighted work. A decree was rendered for applicant, and respondent appealed. The Supreme

Court held that the record failed to show that respondent had violated the copyright and that the matter the applicant alleged was infringed was not even a lawful subject of copyright. The Court drew a distinction between an author's original writing, which was a valid subject of copyright, and the art or practical knowledge explained by the writing, which generally was considered to be community property and was the subject not of copyright but of a patent if completely original to the author. The Court drew analogies from other areas of science and practical arts, such as medicine and mathematics. The court held that a book did not give an author the right to exclude others from practicing what was described in the book, only the right to exclude reproduction of the material in the book.

Copyright law protects each original expression of an idea, but not the idea, theme or concept which underlies those works. Merely because a second work is based upon the same idea as a first work does not mean it infringes the copyright in the first work. Once described to the world, the theory is part of the public domain, something that all can use, but no one can own. Consequently in the instant application, there should be a *prima facie* case of similarities between the two works beyond the abstract and unprotected idea of using software in the management or administration of a university or other tertiary institution.

The applicant's case is that its integrated payment information management software applications; "Zeevarsity" and "Zeepay" are constituent components of the Academic Information Management System (AIMS), a system of integrated software applications, which it developed under a three year "framework contract agreement" with the 1st respondent, executed on 18th August, 2018 (annexure "B" to the affidavit in support of the application). The applicant has certificates of registration of its copyrights issued on 10th May, 2018 (annexures "C1" and "C2" to the affidavit in support of the application). Under clause 14 of the said contract, it was agreed that;

14.1 The purchaser acknowledges and agrees that the supplier and / or its licensees own all intellectual property rights in the services and the documentation at the point of signing this agreement. However, any additions and inventions added by the purchaser and those that are unique to the purchaser will be documented and copyrighted to the purchaser upon installation and development.

14.2 Except as expressly stated herein, this agreement does not grant the purchaser any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any rights or licenses in respect of the services or the documentation as will the supplier respect all patents to the purchaser in the same vain (sic).

The implication is that the Academic Information Management System (AIMS) has elements or applications copyrighted to both the applicant and the 1st respondent. While the applicant has copyrights in constituent applications of AIMS registered to it prior to 18th August, 2018, “additions and inventions added” by the 1st respondent and those that are “unique to” the 1st respondent that were developed and integrated therein post 18th August, 2018 vest in the 1st respondent. The contract is silent as to such additions and inventions as may have been added by the applicant and as to what mechanism is in place to distinguish between additions and inventions added by the applicant from those originated by the 1st respondent.

Be that as it may, the 1st respondent’s case is that the government retained the services of the applicant, as a representative and nominee of Kyambogo University, to develop “E-Kampus” (copyrighted to Kyambogo University) into “AIMS” but has since taken steps towards an attempt to appropriate AIMS as its property on basis of having registered copyrights over “Zeevarsity” and “Zeepay,” which are some of the constituent applications of AIMS. Not being parties to the “framework contract agreement,” the 2nd and 3rd respondents do not lay any claim to a copyright in any of the applications constituting AIMS. The underlying case therefor raises serious questions to be tried as between the applicant and the 1st respondent, regarding copyrights to the various applications constituting AIMS.

ii. Copying of the protected work by the alleged infringer.

The general test for copyright infringement is whether the accused work is so similar to the applicant’s work that an ordinary reasonable person would conclude that the respondent unlawfully appropriated the applicant’s protectible expression by taking out of it, material of substance and value. Two works are substantially similar if the ordinary observer, unless he or she

set out to detect the disparities, would be disposed to overlook them, and regard their aesthetic appeal as the same. The test focuses on the expression of the part of the work reproduced.

The applicant's allegation of infringement appears to be two pronged; on the one part it is constituted in use of the phrase "Academic Information Management System" and its acronym "AIMS", and in on the other hand by the fact that the respondents have expressed an intention to modify or upgrade the digital ecosystem popularly known by that name that is currently in use.

A digital ecosystem is a group of interconnected information technology resources, or a system of integrated software applications, that can function as a unit. It is defined by H. Dong and F. K. Hussain, "Digital ecosystem ontology," in *Emerging Technologies and Factory Automation*, 2007. ETFA. IEEE Conference on IEEE, 2007, pp. 814–817 of the Digital Ecosystem and Business Intelligence Institute (DEBII) from the perspective of specialisation, which sees it as;

An open, loosely coupled, domain clustered, demand-driven, self-organising, and agent based environment which each species is proactive and responsive for its own benefit and profit

A digital ecosystem condenses and processes data into smart, responsive platforms. The system under contention in the instant application is described as the Academic Information Management System (AIMS). It is apparently used to organise, process, and use information as a source within universities and other tertiary educational institutions. It is a digital ecosystem providing the functionalities and services essential for the management or universities and tertiary educational institutions such as; student admission and enrolment, billing of students, allocation of course units to programs offered, etc. It is intended to achieve more effective and efficient processes of academic management in institutions of higher education in order to support the achievement of efficiency in management and higher performance of such institutions.

There is no copyright in common English words or their abbreviations. As a general principle, to be protected by copyright, a work must contain at least a minimum amount of authorship in the form of original expression. Names, titles, and other short phrases are thus considered simply too minimal to meet these requirements. Separated from the original work, such as when not used in connection with a product or service, common short phrases are usually unprotectable.

Whether a claimant can stop someone else from using their literary phrases such as "Academic Information Management System (AIMS)" is dependent upon the uniqueness and value of the phrase as well as the way in which the claimant and the other person uses it. Written in full or in its abbreviated format, the phrase contains common English words and their abbreviation that convey a concept of using information as a source within universities and other tertiary educational institutions. Until proved otherwise by evidence of repute, which has not been availed to this court at this stage of the proceedings, "AIMS" appears to be a common descriptive phrase rather than definitive of a product attributable to the applicant.

It does not appear to be the case at this stage of the proceedings that the phrase "Academic Information Management System" or its acronym "AIMS" is exclusive to the applicant. For example the University of Southampton Website describes its "Academic Information Management Systems" as one;

Designed to store and make available on the Web documents that are to be printed or published without the author having to convert the document to HTML. The system is designed to provide a service to a University Department or Faculty for storing and displaying on the Web finished versions of published material. The design of the system is based upon causing the minimum of impact to existing working practices.

The University of Southampton system under that same phrase has been running since 1997 and its distinguishing features are described as including; automatically making the content of all documents available on the Web, version control and document hierarchy, full text search facilities, uses the Distributed Link Service and Webcosm to dynamically cross reference documents and it is a Lotus Domino application.

The law is settled that mere similarity of phraseology does not amount to an infringement since copyright does not protect words and phrases as such (see *Kelly v. Hutton*, (1868) 37 L.J.R. 917, 921 (Ch.); *Francis Day & Hunter Ltd. v. Twentieth Century Fox Corp.*, [1940] A.C. 112; *O'Brien v. Chappel & Co.*, 159 F. Supp. 58, 59 (S.D.N.Y. 1958); *Becker v. Loew's, Inc.*, 133 F.2d 889, 891 (7th Cir. 1943) and *Kalem Co. v. Harper Bros.*, 222 U.S. 55 *passim* (1911). Copyright laws disfavour protection for short phrases; consequently slogans, and other short phrases or expressions cannot be copyrighted.

Until the court is furnished with evidence to the contrary, I find for the purpose of this application that the phrase “Academic Information Management System” and its acronym “AIMS” merely convey an idea or concept regarding digital enhancement of a more efficient management of universities, yet phrases conveying an idea, concept, procedure, method or other thing of a similar nature are not protected by copyright (see section 6 of *The Copyrights and Neighbouring Act*).

Regarding the contention that the respondents have expressed an intention to modify or upgrade the digital ecosystem popularly known by that name that is currently in use, according to section 5 (5) of *The Copyright and Neighbouring Rights Act, 19 of 2016*, infringement is not actionable unless it involves the “whole piece of work” or “a substantial part” of the work (without a licence). The test to establish whether there is a “substantial reproduction” of computer code was considered by the Australian High Court decision in *Data Access v. Powerflex [1999] HCA 49* where Gleeson CJ, McHugh, Gummow and Hayne JJ observed that:

In determining whether something is a reproduction of a substantial part of a computer program, the “essential or material features” should be ascertained by considering the “originality of the part allegedly taken,” quoting Mason CJ in *Autodesk Inc v. Dyason (No 2) [1993] HCA 6*.

The emphasis is on a qualitative rather than quantitative assessment of substantiality. This requires some process of qualitative abstraction of the material features of the computer program in question in order to determine any issue of substantiality. The court must of necessity engage in a consideration of the quality of the part of the work alleged to have been reproduced. The fact that a part reproduced originates from the author of that part does not, of itself, mean that it is a substantial part of the whole work because, when giving attention to the quality of the part taken, it may be there has been reproduction of something that is largely unoriginal. In this context, the question surrounds the degree of originality in the expression of the work reproduced.

For example the Australian case *IPC Global Pty Ltd v. Pavetest Pty Ltd (No 3) [2017] FCA 82*, concerned allegations of copyright infringement and breaches of confidence relating to IPC Global’s software, where Pavetest used a small proportion of IPC Global’s source code in developing its own software. PC Global makes equipment for testing materials such as asphalt and

other construction supplies. In mid-2012, two employees of IPC Global resigned. The employees subsequently established the company, Pavetest, which launched a range of testing equipment to compete with IPC Global. At the time the employees resigned, one had copies of IPC Global's software. The employee copied the software onto another computer and provided it to a programmer engaged by Pavetest to write Pavetest's own software. The programmer referred to IPC Global's software in writing a first version of Pavetest's software. IPC Global's software comprised about 250,000 lines of source code, which included about 40 different test modules. There was a significant amount of duplication of code across the modules. Only about 800 lines of this source code was shown to be identical or similar to Pavetest's first version of source code. The evidence showed that some of the Pavetest software code was identical to the IPC software code, and that other parts of it were similar. An expert estimated that there were roughly 1,000 lines of code which corresponded between the programs ("Copied Code").

The Federal Court found that Pavetest infringed IPC Global's copyright in the software by the act of the former employee copying the software onto the computer provided to the programmer. The former employees were also found to be liable as they authorised this infringement by Pavetest. Pavetest infringed IPC Global's copyright in the software by the creation of the first version of software, and the former employees authorised this infringement. The court was of the view that the first version reproduced a substantial part of IPC Global's software, for the following reasons:

- there was originality in the expression of the sequences of IPC Global's source code. Although the quantum of source code used by Pavetest is small relative to the total size of IPC Global's software, the cases make clear that the emphasis is on a qualitative rather than quantitative assessment. The parts of the software that were copied constituted a functionally significant part of the software, as they related to the interface or communication between the software and firmware. The two employees breached duties of confidence towards IPC Global relating to the software. The software was found to be confidential, and the employees misused the information by disclosing it to the programmer.

The Court made a number of orders including: permanently restraining Pavetest from offering to sell the versions of the CDAS firmware or TestLab software the subject of the proceedings;; permanently restraining the individuals from offering to sell the versions of the CDAS firmware

or TestLab software the subject of the proceedings; requiring the delivery up or destruction of copies of the CDAS firmware and TestLab software the subject of the proceedings; that an inquiry be held to quantify the damages (including any additional damages) or, at IPC's election, to take an account of profits; and, that Pavetest and the individuals pay IPC's costs of and incidental to the proceeding.

The case highlights that copyright infringement can be made out where only a small proportion of source code is taken from a piece of software, where that source code constitutes a functionally significant part of the software. A qualitative assessment involves consideration of functionality, while a quantitative assessment involves consideration of textual similarity. The use of even a single code library can be enough to constitute a substantial part of a computer program and be sufficient to constitute copyright infringement.

Thus, in addition to whatever other physical evidence of copying is produced, the applicant's ability to show a likelihood of success on its claim will depend on whether it can demonstrate that the respondents' works will be substantially similar in functionality to the applicant's protected source code. Absent physical evidence of copying, the applicant must at least demonstrate that the respondent's works will be or are substantially similar to the applicant's original expression of these concepts.

In most computer software, there are significant sections of code which are not unique to any one program but appear in many programs. Those more generic portions of code are commonly necessary to provide some universally required functionality. They represent and enable operation and thus resemble an idea or principle more so than an expression of creativity insight. These portions of generic code are routinely embedded with sections of code that are original and enable the software to perform specialised function. For example, portions of computer code that are not original but are necessary to ensure compatibility with industry technical standards or interconnectivity with other programs and devices are routinely embedded in copyright protected software. Therefore not all similarities amount to infringement.

When infringement by copying the code is alleged, the court must determine which elements of the overall software product have been copied. If the copying was confined to generic, widely applied elements of the product, there is no infringement. Infringement will be found only if the copying involves distinctive elements of the program which are unique to that software. Only if the code used by the allegedly infringing product is substantially similar to that of the original product, will there be an infringement.

According to section 43 (1) of *The Copyright and Neighbouring Rights Act, 19 of 2016*, the owner of a copyright or a neighbouring right may register the right with the Registrar for the purpose of; -
(a) keeping evidence of ownership of the right; (b) identification of works and authors; (c) maintenance of record of the rights. Then under section 43 (7) thereof, a certificate of registration of a piece of work may be received in evidence as proof of ownership of that piece of work.

In the instant case, the applicant relies on correspondences between the 1st and 2nd respondents, copies of which are annexed the affidavits in rejoinder, as proof of an expressed intent to infringe its copyrights in dispute in the main suit. Whereas section 43 (3) and (4) of *The Copyright and Neighbouring Rights Act, 19 of 2016*, requires the owner of a copyright at registration to reduce the piece of work which is creating the right to a material form before the owner of the right can register it and to deposit a copy of the work creating the right with the Registrar for registration, this court has not been furnished with a copy.

Considering that by their “framework contract agreement” the applicant has copyrights in constituent applications of AIMS registered to it prior to 18th August, 2018, while “additions and inventions added” to it by the 1st respondent and those that are “unique to” the 1st respondent that were developed and integrated therein post 18th August, 2018 vest in the 1st respondent, to decide at this stage of the proceedings that 2nd respondent’s express intent to develop AIMS 2.0 would necessarily involve an infringement of the applicant’s copyright would be speculative. This is because the court has not been availed with any material from which it can deduce that in order to do so, the 2nd and 3rd applicants must go beyond the generic, widely applied elements of the AIMS, to intrude into code that is qualitatively unique to “Zeevarsity” and “Zeepay.”

iii. Imminent danger of infringement.

Section 45 of *The Copyrights and Neighbouring Act* provides protection when intellectual property rights are “in imminent danger of being infringed or are being infringed.” “Imminent danger” is an expression used to describe situations that pose a direct and immediate danger to the individual affected by the action, and serious enough as to require the court to act swiftly. This includes situations in which an infringement is on the point of happening or has already materialised or is likely to happen again.

Imminence means something that is to take place very soon, a danger that is certain, immediate, and impending; “on the point of happening” (see *Black’s Law Dictionary*, Revised 4th edition, p. 884). It is of a nature that is highly probable, as opposed to possible, remote or contingent. Contingent occurrences are those that depend on the outcome of an uncertain events. “Possible” represents remote events that are not expected to occur, but which cannot be ruled out completely.

Possible events are those which may or may not happen, while probable events are those which are more likely than not, to happen. The requirement of imminence therefore excludes infringements that are unlikely, merely possible, or merely expected, to cover those that are probable, reasonably certain, highly probable or virtually certain.

It is trite that a temporary injunction order should not issue where it would fully or substantially dispose of the main suit (see *Batemuka Denis Kimuli v. Sarah Birobonwa Anywar & Ltd John C. Anywar* [1987] HCB 71; *Uganda Muslim Supreme Council v. Sheikh Kassim Mulumba* [1988] HCB 110 and *Babumba Francis and two others v. Bunju Erusa* [1988-90] 119. The courts deprecate the practice of granting temporary injunctions which practically give the principal relief sought in the main suit. Since a permanent injunction is sought in the main suit, in order to avoid pre-judging that issue, there ought in the instant case to be *prima facie* evidence showing that the infringement could happen anytime within the near future; certainly before the time projected for conclusion of the proceedings in the main suit elapses as to pose the danger of the suit being rendered nugatory.

To determine whether or not the applicant's intellectual property rights are "in imminent danger of being infringed" or purposes of a temporary injunction as opposed to the main suit, an assessment must thus be made of the specific nature of the threat considering; - the type of intellectual property in issue; the time in which it is likely that the infringing product will be launched; and the capabilities of the accused infringer. All this can help to determine the likelihood of the infringement being realised, and therefore, the probability of the potential infringement succeeding in a manner that renders the suit nugatory. In doing this, consideration may also be given to facts that show a pattern of coordinated activities, which can help further to reinforce the belief that a potential infringement may be underway. Preparations must have been purposely made with a view to committing an infringing act. The respondent must have performed acts which make it likely that a direct infringement will occur in the very near future.

In the instant case, the only undisputed fact is that the 1st and respondent has access to applicant's source code, yet infringement requires both access and proof of substantial similarity. To engage in a qualitative assessment involving functionality, it is necessary for there to be evidence of all that the applicant's source code does in order to understand the significance, in context, of what the respondents are planning do. Evidence establishing a *prima facie* case of originality in the expression of the sequences of the applicant's source code in "Zeevarsity" and "Zeepay" as integrated payment information management software applications, has not been adduced.

Accordingly, I am unable to perform a qualitative preliminary assessment as to whether or not the respondent's works will be or are substantially similar to the applicant's original expression of these concepts. No *prima facie* case has been established to show that the sequences of the applicant's source code in question "Zeevarsity" and "Zeepay" will play a functionally significant role in the operation of the 2nd respondent's software in "AIMS 2.0" as a whole. The applicant therefore has not discharged its onus of proof in this respect.

On the other hand, it is common knowledge that the finances of the 1st and 2nd respondents are governed by *The Public Finance Management Act, 3 of 2015* sections 15 and 21 whereof require the respective Accounting Officers to manage the institutional activities in accordance with the annual cash flow plan issued by the Secretary to the Treasury and the policy statement of the vote.

Although the applicant has adduced evidence of requisitions made for funding the upgrade, there is nothing to show that a budget for the activity has been presented, let alone approved and funds disbursed for it. Budgets are presented, approved and implemented on an annual basis. The applicant has not presented evidence to show that the development of "AIMS 2.0" forms part of the 1st and 2nd respondents' budget process for the next financial cycle. For all intents and purpose therefore, "AIMS 2.0" may practically take more than a year to realise.

By their own admission, in a letter annexed to the applicant's affidavit in rejoinder, the 2nd respondent is still seeking funds from the 1st respondent to finance the "AIMS 2.0" project which in their estimation will take the 2nd respondent not less than five months to develop. That time frame does not present the degree of imminence that would justify issuance of a temporary injunction in circumstances such as this where doing so runs the danger of substantially pre-determining the suit. This therefore is not an exceptional case where the danger of the suit being rendered nugatory prevails over that of appearing to substantially pre-determine the suit.

- ii. Whether the applicant will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue.

Second, the applicant must show that it would suffer irreparable harm if the court refused to grant the injunction and the respondent was allowed to continue in its course of conduct. "Irreparable" in this context refers not to the size of the harm that would be suffered, but its nature. If the harm could not be quantified by payment of money, or if the harm is not readily calculated or estimated, this part of the test will usually be satisfied. In some Intellectual Property cases, where a respondent appears to be clearly infringing the applicant's rights, the court may conclude that the applicant would suffer irreparable harm absent a pre-trial injunction order. In some cases, however, the availability of damages often precludes such a finding.

The Court may grant a temporary injunction if it is apparent that the respondent is about to embark on a course of action that would infringe an applicant's Intellectual Property rights. For example, where a party has prepared materials that would infringe an applicant's rights, but has not yet used materials, an injunction may be granted. The court will particularly be inclined to grant the

injunction where there appears to be a *prima facie* breach of property rights, or where the potential harm that could flow should a court order not be granted is difficult or impossible to calculate and quantify at a later stage in the suit.

- 5 Authors may transfer the economic rights in their works to individuals or companies best able to market them, in return for payment. Such payments are often made dependent on actual use of the works and are referred to as royalties. Transfer of copyright may take one of two forms: assignment and licensing. Under an assignment, the right owner transfers the right to authorise or prohibit certain acts covered by one, several or all rights under copyright. The person to whom the rights are assigned becomes the new copyright owner or right holder. Licensing means that the copyright owner retains ownership but authorises a third party to carry out certain acts covered by the economic rights, generally for a specific period of time and for a specific purpose.

15 Copyright protects the author's economic interests. It is conceivable that early entry into the market of a comparable and competing product would disturb the copyright monopoly for that product and would be likely to alter the market in ways which are not readily predictable or for which an award of pecuniary damages would not afford adequate compensation. The possible irreparable damage would be: loss of sales and rental income, flowing from the need to compete with a cheaper product on the market; price depression, flowing from downward price pressure which would be exerted by purchasers if a cheaper version of the same product were available; loss of goodwill which would be caused to the applicant if it were to seek to maintain the prices at a level above those for a comparable product; and loss of goodwill should an injunction be granted at trial and the applicant seeks to enforce its monopoly and return to its present price structure, i.e. the applicant would come to be seen as "the villain" in the market.

25 On the other hand, copyright protects more than the author's strictly economic interests; the author's personal, aesthetic and reputational interests may also be at stake. According to section 10 (1) (c) and (2) of *The Copyright and Neighbouring Rights Act, 2006* an author has the right to object to and seek relief in connection with any distortion, mutilation, alteration or modification of the work, or other derogatory action in relation to a work; and to withdraw the work from circulation if it no longer reflects the author's convictions or intellectual concepts. By virtue of

this provision, the author has the right to have his or her work attributed. This right is infringed if his or her name is omitted. The right of attribution safeguards an author's right to compel recognition for his or her work and to prevent others from naming anyone else as the author. Furthermore, the author has the right to the integrity of his or her work and to prevent changes to it that prejudice his or her honour or reputation. The right of integrity lies at the heart of the moral rights doctrine, as it prohibits any alterations of an author's work that will destroy the spirit and character of the creator's work.

Moral rights (the right of attribution and the right of integrity) are only accorded to individual authors and remain with the authors even after the authors have transferred their economic rights. In general moral rights belong to the individual author of a work regardless of who owns the economic rights, which moral rights are not assignable to any person, except for purposes of their enforcement (see section 10 (3) of Act). Thus authors have certain specific rights (moral rights) in their creations that only they can exercise.

The court may make an award of damages to compensate the right holder for economic or moral injury suffered through the infringement. As an alternative to damages, the applicant may be entitled to recover any profits made by the respondent through the infringing activities. If there is any danger that infringing acts may continue, the court may also issue an injunction ordering the respondent not to carry out such acts, with failure to comply subject to sanctions. In addition, in order to create an effective deterrent, the court will usually have the power to order the destruction of the infringing goods and any tools and materials predominantly used to produce them.

Considering that the overwhelming majority of commercial users of computer programs may not be aware of the intricacies associated with the source codes used to run them, and by extension their authorship, the danger posed to moral rights by infringement may be limited to a small enclave of individuals involved in writing code and computer programming. For most commercial users, exposure to software code is limited to the Matrix and those terrifying moments when they accidentally open the command prompt on their computers. The court will therefore ordinarily not find it exceptionally difficult to make an award of damages to compensate the rights holder's moral

injury suffered through the infringement, when the persons alive to such would be so limited. This therefore essentially is a case in which the court will be required to make an award of damages to compensate the rights holder for economic injury suffered through the infringement, if proved, and this is not such a daunting task considering that the commercial users of the software are a handful of public universities and self-accounting tertiary institutions and an ascertainable community of persons associated with those institutions over a specified period of time.

iii. Whether the threatened injury to the applicant outweighs the threatened harm the injunction might inflict on the respondent.

The third part of the test involves, the court assessing which of the parties would suffer greater harm from the granting or refusal of the injunction pending trial. This part of the test is referred to as the "balance of convenience." Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application, some disadvantages which his or her ultimate success at the trial may show he or she ought to have been spared and the disadvantages may be such that the recovery of damages to which he or she would then be entitled would not be sufficient to compensate him or her fully for all of them.

Unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the applicant has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. Here, the courts examines a variety of factors, including the harm likely to be suffered by both parties from the granting or refusal of the injunction, and the current *status quo* as at the time of the injunction.

The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his or her succeeding at the trial is always a significant factor in assessing where the balance of convenience lies. The governing principle is that the court should first consider whether if the applicant were to succeed at the trial in establishing his or her right to a permanent injunction he or she would be adequately compensated by an award of damages for the loss he or she would have sustained as a result of the respondent's continuing to do what was

sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the respondent would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the applicant's claim appears to be at this stage.

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If, on the other hand, damages would not provide an adequate remedy for the applicant in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the respondent were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated by the applicant for the loss he or she would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages would be an adequate remedy and the applicant would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

15 It is in the nature of applications for temporary injunctions to be made upon contested facts. The decision whether or not to grant an interlocutory injunction therefore has to be taken at a time when *ex hypothesi* the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the suit. The object of the interlocutory injunction is to protect the applicant against injury by violation of his or her right for which he or she could not be adequately compensated in damages recoverable in the suit if the uncertainty were resolved in his or her favour at the trial; but the applicant's need for such protection must be weighed against the corresponding need of the respondent to be protected against injury resulting from his or her having been prevented from exercising his or her own legal rights for which he or she could not be adequately compensated in damages if the uncertainty were resolved in the respondent's favour at the trial. The Court must weigh one need against another and determine where "the balance of convenience" lies.

For example, if the *status quo* is that the respondent has been carrying on the activity complained of for a long period of time, and the applicant knew or should have known of the activity, but has not previously objected, the court will be reluctant to make an order preventing the respondent from continuing the conduct. On the other hand, if the respondent has only recently embarked on

the conduct and has not expended significant resources, then this may well place the balance of convenience in favour of the applicant.

5 To the contrary, if the respondent is enjoined temporarily from doing something that he or she has not done before, the only effect of the interlocutory injunction in the event of his or her succeeding at the trial is to postpone the date at which he or she is able to embark upon a course of action which he or she has not previously found it necessary to undertake; whereas to interrupt him or her in the conduct of an established enterprise would cause much greater inconvenience to him or her since he or she would have to start again to establish it in the event of his or her succeeding at
10 the trial.

In the instant case, by their “framework contract agreement” the applicant has copyrights in constituent applications of AIMS registered to it prior to 18th August, 2018, while “additions and inventions added” to it by the 1st respondent and those that are “unique to” the 1st respondent that
15 were developed and integrated therein post 18th August, 2018 vest in the 1st respondent. Despite that arrangement, the applicant has been accused of having shut down AIMS, or attempted to do so, around December, 2020 causing the 1st and 2nd respondents considerable disruption and anxiety. Issuing an injunction would prevent the two respondents from undertaking measures designed to insulate them against such behaviour on the part of the applicant recurring in future.
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Balance of convenience means comparative mischief or inconvenience that may be caused to the either party in the event of refusal or grant of injunction. It is necessary to assess the harm to the applicant if there is no injunction, and the prejudice or harm to the respondent if an injunction is imposed. The applicant seeks the interlocutory injunction so as to protect it against injury by
25 violation of its right for which I have already found it could be adequately compensated for in damages if the uncertainty were resolved in its favour at the trial. The applicant’s need for such protection must be weighed against the corresponding need of the respondents to be protected against injury resulting from their being prevented from exercising their own legal rights for which may not be adequately compensated in damages if the uncertainty were resolved in the their favour
30 at the trial. Having done so, I find that the balance of convenience in favour of the respondents.

iv. Whether the granting of a preliminary injunction will disserve the public interest.

Copyright law does not provide protection for ideas, concepts, principles or themes, as access to those intangible thoughts would impede creativity, investigation, and innovation. It follows that in assessing the public interest, the court must proceed on the assumption that the private use of intellectual property is directed to the public good and serves a valid public purpose. The public has an interest in seeing that private use of intellectual property is not improperly and unnecessarily affected, and thus the issuance of an interlocutory injunction to prevent that use does not serve the public interest.

Copyright law exists to promote improvements in science and art. Granting monopoly rights or controlling access to and use of ideas and the intangible thoughts that are the basis for creative work would undermine such improvements. If there is only one way or a limited number of ways to express an idea or concept, then the expression of that idea is not eligible for copyright protection (see *Incredible Technologies, Inc. v. Virtual Technologies, Inc.*, 400 F.3d 1007, 74 U.S.P.Q.2d (BNA) 1031 (7th Cir. 2005)). The reason is that this would make it impossible for anyone else to access or make use of that idea. The party who first expressed the idea would thus have total control over its use. Copyright law is not intended to block access to ideas, but to encourage creation of new materials.

In the majority of cases, it may be acceptable to assume that there is irreparable harm to the public interest when an injunction stops an authority from protecting the public good. The assumption that the public interest will suffer irreparable harm when an injunction stops an authority from protecting the public good can be overcome when an applicant demonstrates that the injunction itself serves the public interest. In order to overcome the assumed benefit to the public interest arising from the continued private use of intellectual property, the applicant who relies on the public interest must demonstrate that the suspension of that use would itself provide a public benefit.

By their “framework contract agreement” the applicant has copyrights in constituent applications of AIMS registered to it prior to 18th August, 2018, while “additions and inventions added” to it

by the 1st respondent and those that are “unique to” the 1st respondent that were developed and integrated therein post 18th August, 2018 vest in the 1st respondent. Issuing the injunction at this stage would practically tantamount to granting the applicant monopoly rights of controlling access to and use of AIMS which, based on the pleadings before court, is apparently the joint creative work of the applicants the 1st and 3rd applicants, while the 2nd applicant is a beneficiary thereof. A temporary injunction would in the circumstances undermine the improvements envisaged in the “framework contract agreement” and generally stifle ideas and the intangible thoughts that are the basis for such improvements.

10 In circumstances where it is not clear yet to court as to whether or not there is only one way or a limited number of ways in which to digitally express the idea or concept of an academic information management system, it is more prudent to err on the side of caution by not issuing an order whose effect would be to curtail improvements in computer applications in that field, the very cause for which the law of copyright exists. Consequently, the public interest in promoting
15 innovations in computer applications outweighs the detriment or injury to the economic benefits that may be caused by not granting the temporary injunction in the circumstances of this case. In my view, the public interest favours refusing, rather than granting, the injunction. The application is accordingly dismissed. The costs of the application shall abide the result of the suit.

20 Dated at Kampala this 20th day of May, 2021

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Stephen Mubiru
Judge,
20th May, 2021.



