

UGANDA / JUDGMENT

Kiggundu v Black Market Records Entertainment -SMC Limited & 2 Others (Miscellaneous Application 1985 of 2023) [2023] UGCommC 200 (25 October 2023) [2023] UGCommC 200

COURT

Commercial Court of Uganda

BEFORE

Mutesi, J

CASE / FILE NUMBER

Miscellaneous Application 1985 of 2023

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THE REPUBLIC OF UGANDA

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

MISCELLANEOUS APPLICATION NO. 1985 OF 2023 ARISING FROM
MISCELLANEOUS APPLICATION NO. 1984 OF 2023 ALL ARISING FROM CIVIL SUIT
NO. 1025 OF 2022

KIGGUNDU BRUNO (A. K. A. BRUNO K.) ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS

1. BLACK MARKET RECORDS ENTERTAINMENT – SMC LTD
- 2. CEDRIC SINGLETON LYCHERN
- 3. KISAME SHADRACK SHAGAF ::::::::::::::::::::::::::::::::::: RESPONDENTS

(Before: Hon. Lady Justice Patricia Mutesi)

RULING

Introduction

This application is brought by notice of motion under Sections 4, 5 and 45 of the Copyright and Neighbouring Rights Act, 2006, Section 98 of the Civil Procedure Act and Orders 50 rules 3 and 3A and Order 52 rule 1 of the Civil Procedure Rules. The application seeks the grant of an interim

order restraining the respondents, their agents and/or anyone deriving authority under them from directly or indirectly infringing on the applicant's copyrights and passing off as owners of the applicant's songs until the hearing and determination of the application for a temporary injunction. The application is supported by an affidavit sworn by the applicant.

Briefly, the grounds of this application are that the applicant is a Ugandan-based singer who signed a 1-year exclusive recording artist agreement with Black Market Records LLC, a US-based company, on 12th May 2020. The latter was represented in the transaction by the 2nd and 3rd respondents. Under the agreement, Black Market Records LLC was to finance the recording and production of the applicant's songs in exchange for exclusive copyright in the songs.

The applicant insists that he only recorded one song for the duration of the agreement and that he elected not to renew the agreement after its expiry in May 2021. On 24th November 2022, the Applicant brought Civil Suit No. 1025 of 2022 ("the main suit") to this Court claiming that the respondents had made false copyright complaints against him in bad faith to Youtube, a video sharing platform, which led the platform to strike down his songs and disable his channel. The main suit is yet to be disposed of.

On the basis of recent correspondence from YouTube which revealed that more copyright claims have been made against his music since the filing of the main suit, the applicant has now filed Miscellaneous Applications No. 1984 of 2023 and 1985 of 2023 seeking a temporary injunction and an interim order, respectively, restraining the respondents from continuing to make copyright claims against his music pending the outcome of the main suit.

The 1st respondent did not file an affidavit opposing this application. In their affidavits in reply, the 2nd and 3rd respondents denied any responsibility for the impugned copyright claims and maintained that the applicant does not have any cause of action against them, even in the main suit. The applicant has not filed an affidavit in rejoinder to the affidavits in reply.

Representation and hearing

The Applicant was jointly represented by Mr. Idoot Augustine of M/S Kampala Associated Advocates and Mr. Ivan Bwoowe of M/S Alto Advocates. The Respondent was represented by Mr. Mutayomba Geoffrey of M/S Agaba & Co. Advocates. I have considered the materials on record and the submissions of counsel.

Issue arising

1. Whether this application should be allowed.

Determination

Issue 1: Whether this application should be allowed.

The law on granting of interim orders in our jurisprudence is well settled. The grant of an interim order is discretionary in nature and the Court is at liberty to grant or not to grant it depending on the circumstances of the case. The order regulates the respective positions of the parties to a case by preserving the status quo of the dispute until the substantive application for a temporary injunction is disposed of.

The considerations for the grant of an interim order of stay of an interim injunction are whether there is a pending substantive application and whether there is a serious threat that the status quo will be altered before the hearing of the substantive application. See also **Isabirye Charles v Alex Kakooza & 2 Ors, High Court Miscellaneous Application No. 656 of 2020**.

In the instant case, the applicant stated in paragraph 34 of the affidavit in support of the application that he has filed an application for a temporary injunction in this Honourable Court vide Miscellaneous Application No. 1984 of 2023 which is yet to be heard and determined. This fact was not contested by the respondents in their affidavits in reply. A review of the court record confirmed that the said substantive application is still pending before this Honourable Court.

Additionally, paragraphs 33, 36, 37 and 39 of the affidavit in support of the application assert that since 1st August 2023, the respondents have claimed copyright in a total of 9 songs belonging to the applicant and that these songs have consequently been struck down from the applicant's YouTube page. The applicant believes that this conduct shows that the respondents are willing to keep striking down his music with impunity despite the pendency of the main suit. The respondents have denied any responsibility for the strikes on the applicant's songs.

Annexure J to the affidavit in support of the application is the email correspondence from YouTube to the applicant dated 16th August 2023. Therein, the applicant was informed by YouTube that his account would be disabled in 7 days following receipt of copyright takedown notices in respect of 6 of his songs posted on the account. The notices were issued by "Black Market Records" and "Black October Music". Whereas the Respondents assert that the emails being used to strike down the Applicant's music belongs to Black Market Records LLC, a US-

based company, when signing the Applicant was signing the recording artist agreement with Black Market Records LLC, the 2nd and 3rd respondents represented the company in the transaction. Having reviewed the materials on record, and recalling my ruling in Miscellaneous Application No. 0494 of 2023 in which the 2nd and 3rd respondents admitted to be officers of the 1st respondent with previous working relations with the applicant, there is a significant likelihood that the complaints leading to the aforementioned copyright strikes were made by the respondents, or by persons known or connected to them.

I therefore find that there is a real likelihood that this conduct of raising copyright claims against the applicant's songs will continue and that more of the applicant's works will be struck down from YouTube and other music streaming platforms even before the disposal of the substantive application for a temporary injunction. In any case, since the ownership of copyright in the applicant's songs is still in issue in the main suit, the interests of justice would be best served if the respondents allow this Court to first conclusively determine this ownership through a full trial before making further claims to third party music streaming platforms to the detriment of due process and fair hearing. Consequently, I make the following orders:

- i. An interim order is hereby issued restraining the respondents, their agents and/or anyone deriving authority under them from directly or indirectly making any copyright ownership claims in respect of any of the applicant's songs to any media institution or music streaming platform until the hearing and determination of the application for a temporary injunction.
- ii. Costs of this Application are awarded to the Applicant.

Dated this 25th day of October 2023

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Hon. Justice Patricia Mutesi

JUDGE

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