

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

MISC APPL No. NO 1042 OF 2015

(ARISING OUT OF HCCS NO. 855 OF 2015)

UGANDA PEROFMING RIGHTS SOCIETY ::::::::::::::::::::::::::::::::::: APPLICANT

VS

MEGA STANDARD SUPERMARKET ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE HON. JUSTICE B. KAINAMURA

RULING

This is an application experte brought under the provisions of S.45 (2) of the Copyright and Neighboring Rights Act, 19 of 2006 Ss 33 and 38 (1) of the Judicature Act, Ss 22 and 98 of the Civil Procedure Act, cap 71 and 0.48 rr 1 and 3 of CPR seeking orders that an Anton Pillar Order under S.45 (2) of the Copyright and Neighboring Rights Act directed to the respondent be granted in the terms prayed for in the Notice of Motion.

The grounds for the application briefly are that the applicant has a strong *prima facie* case in the main suit filed in the court and that the respondent possesses vital materials relevant to the main case which they might destroy or dispose of so as to defeat the ends of justice. Further that court orders the respondent to allow the applicant to enter upon the respondent's premises located at Burton Street Kampala to search for and seize/remove any copyright infringing material.

The application was supported by two affidavits of Lubowa Aloysius a Copyright Inspector with the applicant who deponed *inter alia* that on 1st January 2014 he visited the respondent's premises located at Burton Street Kampala and recorded the music playing within the shopping mall which music recording contains musical works which were being unlawfully performed by

the respondent that are under the applicants repertoire and that a further visit to the respondents premises on 19th January 2016 yielded the same results.

For this application to succeed it must pass the test established in the classic case of **Anton Pillar K-G Vs Manufacturing Processes Ltd & Others [1976] ALL ER 779** where Lord Denning stated:-

“..... it seems to me that such an order can be made by a judge experte but should only be made where it is essential that the plaintiff should have inspection so that justice can be done between the parties and when, if the defendant forewarned there is a grave danger that vital evidence will be destroyed, that papers will be burnt or lost or hidden or taken beyond the jurisdiction, and so the ends of justice be defeated and when the inspection would do no real harm to the defendant’s case”

In the same case, the three essential pre-conditions for the grant of an Anton Pillar order were stated to be:-

1. There must be an extremely strong *prima facie* case.
2. The damage, potential or actual must be very serious to the plaintiff
3. There must be clear evidence that the defendant has in its possession incriminating documents or things and that there is a real possibility that it may destroy such material before any application inter-parties can be made.

Section 45 (1) and (2) of the Copyright and Neighboring Rights Act, 19 of 2006 is the basis of an Anthony Pillar order in Uganda and provides;

S.45 (1) Any person whose rights under the Act are in imminent danger of being infringed or are being infringed may institute civil proceedings in the Commercial Court for an injunction to prevent the infringement or to prohibit the continuation of the infringement.

(2) Upon an ex-parte application by a right owner the court may in chambers make an order for the inspection of or removal from the infringing person’s premises of the

copyright infringing materials which constitute evidence of infringement by that person.

What now has to be determined is whether the application before court passes the test for grant of an Anton Pillar order.

Mr. Lubowa the applicant's Copyright Inspector deponed that the applicant is a collecting society in Uganda and upon its instructions he visited the respondent's premises located at Burton Street Kampala. That during the visit he was able to record the music playing at the premises (a shopping mall) and that the said recording contains musical works that included those that were verified to be under the applicant's repertoire. Further that the applicant has filed HCCS No. 1042 of 2015 which has a high likelihood of success in so far as acts of the respondent are illegal and in breach of copyrighted material protected under the law. Further that the applicant should be permitted and allowed access to enter the respondent's premises for purposes of carrying out inspection to search for and seize and remove the infringing material so as not to render the main suit nugatory. Attached to the affidavits are some of the recordings taken by the inspector at the respondents premises.

From the facts before me and the evidence available on court record I am persuaded that the applicant has a strong *prima facie* case and that the damage so far done and yet to be done to the plaintiff's repertoire is serious and from the evidence of Mr. Lubowa I am persuaded that the defendant has in its possession incriminating material which may be destroyed before any application inter-parties is made.

In the premis, I find that the applicant has satisfied all essential pre-conditions for grant of an Anton Pillar order which is accordingly granted in the following terms.

1. The respondent is ordered to permit the applicant in the company of ONLY its advocates to enter its premises at Burton street Kampala.
2. The purpose of that entry is to inspect all the computers or other gargets used for the public performance of various music works in the applicant's repertoire in Uganda and clone the said music works on flash disks or any other medium which should be put into the custody of this court for purposes of the inter-party hearing.
3. Costs of this application shall be in the main cause.

For avoidance of doubt, I wish to emphasise that the above order is not a search warrant and as such does confer on any one a right of forceable entry into the premises. The applicant must therefore get the respondent's permission to enter the premises. It remains open for the respondent to refuse and if he so wishes to apply urgently for variation or discharge of the order. Should the respondent refuse and choose not to apply for verification or discharge of this order then it will expose the respondent to the risk of proceedings for contempt of court.

I so order.

B. Kainamura

Judge

6th.5. 2016