



**UGANDA REGISTRATION SERVICES BUREAU
THE TRADEMARKS ACT, 2010
IN THE MATTER OF TRADEMARK APPLICATION NO. UG/T/2017/059819 “RML”
AND THE CROWN DEVICE IN THE NAMES ROYAL MABATI UGANDA LTD
AND
APPLICATION FOR CANCELLATION BY MEGHA INDUSTRIES (U) LTD**

**MEGHA INDUSTRIES (U) LTD:.....APPLICANT
VERSUS
ROYAL MABATI UGANDA LTD:..... RESPONDENT**

Before: Birungi Denis: Assistant Registrar of Trademarks

Ruling

(a) Background

1. The applicant—Megha Industries (u) Ltd is a company incorporated under the laws of Uganda. The applicant filed this application seeking cancellation and removal from the register; of the Respondent’s trademark No.UG/T/2017/059819 “RML” and the crown device in class 35 of the Nice Classification of Goods and Services in respect of advertising; business management; business administration; office functions. The Respondent’s trademark is indicated below;



2. The basis of the applicant’s claim is that it is the registered proprietor of trademark No. UG/T/2007/030004 in class 6 of the Nice Classification of Goods and service in respect of steel products. Its trademark is indicated below;



3. The applicant uses its trademark in the business of manufacture and selling of steel products. The gist of the applicant’s case is that the Respondent, whose trademark

is registered in class 35 with respect to advertising, is now using it in the business of manufacturing and selling of steel products. It is because of the use of the trademark in products similar to those of the applicant, that the applicant lay a claim of trademark infringement against the Respondent.

(b) Preliminary issues

4. The matter came up for mention and scheduling on 13 November 2023. Counsel David Mushanga of Mushanga and Associates, assisted by Counsel Derrick Muhereza, represented the Applicant. The Respondent did not have legal representation but was represented by its General Manager, Ms. Esther Wanjugu Kangarua—who indicated that she would engage an advocate to represent the company. Consequently, Kian Associated Advocates filed the written submissions and is on record as Counsel for the Respondent.
5. The Registrar raised a preliminary issue as to the locus of the applicant to bring cancellation proceedings, given that trademark No. UG/T/2007/030004, the basis of its claim, is registered in the names of ROYAL STEEL. According to the Business names register, Royal Steel is registered as a business name/partnership under No.156853 with Mr. Shiraz Meghan and Mr. Sikander Meghan as individual partners, while the Applicant is the corporate partner. The Registrar therefore directed parties to address him on the question of locus of the applicant to bring this application.
6. The parties were directed to file written submissions on the issue. The applicant to file by 24 November 2023, the Respondent by 1 December 2023 and a rejoinder to be filed by the 4 December 2023.

(c) Submissions

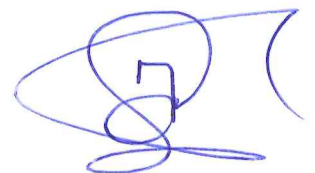
7. Counsel for the applicant submitted that the applicant being one of the partners in Royal Steel which appears on record as the proprietor of trademark No. UG/T/2007/030004, is authorized to file this application on behalf of the partnership, and hence qualified as an aggrieved person within the meaning of section 88 (1) of the Trademarks Act, 2010, to apply and seek cancellation by way of rectification of the register.
8. Counsel submitted that as a partner of Royal Steel, the applicant is affected by “*any infringement of the trademark*”, thereby making it an aggrieved person competent to



bring this application. Counsel relies on the authority of section 5 (1) of the Partnerships Act, which states that *“Every partner is an agent of the **firm** and his or her other partners for the purpose of the **business** of the **partnership**”* for the proposition that the applicant acted as an agent of Royal steel to file this application and that its actions were done in the ordinary course of business within the meaning of section 5 (2) of the Partnerships Act. To buttress this argument, Counsel relied on the authority of **Primer v Bakayana and 4 others Civil Suit No.319 of 2019** where it was noted that;

“Persons who have entered into a partnership with one another are called individually “partners “and collectively “a firm”, and the name under which their business is carried on is called the “firm”. Thus, a firm is not a legal entity, and it is the collective term for the partners who have entered into a partnership with one another. In other words, a firm does not have any existence away from its partners. A firm is not a legal entity in the sense of a company and when a suit is filed in or against the name of the firm, it is in reality a suit by or against all partners of the firm”

9. Consequently, Counsel submitted that the action of filing this application qualifies as an act done in the course of business, and that acts of one partner conducted in the course of business bind all partners. Counsel relied on the case of **Digital Displays Ltd v Tim Construction Company Ltd & 3 others Civil Suit No.21 of 2015** where it was stated that *“an act performed by one partner for the purpose of carrying on the ordinary course of business of the firm binds the firm and his or her partners, unless the partner so acting does not have the authority to act for the firm”*. Based on this principle, it is submitted that the applicant acted to prevent trademark infringement by the Respondent where by the directors granted powers of attorney to authorize the filing of this application. The said powers of attorney, which have been annexed as annexures C and D to the submissions, are granted by the Applicant to a one Mwesigye Myers to file and appear in proceedings for trademark infringement against the Respondent.
10. For the Respondent, it was submitted that the applicant has no locus to prosecute the application. Counsel relies on the Provisions of Order 30 rule 1 of the Civil Procedure Rules which states that;



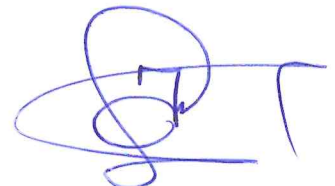
“Any two or more persons claiming or being liable as partners and carrying on business in Uganda may sue or be sued in the name of the firm, if any, of which those persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such a case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in the firm, to be furnished and verified in such manner as the court may direct”

11. Based on the above provision, Counsel submitted that the applicant cannot sue alone, but should have done so with another partner of Royal Steel. Counsel distinguishes the case of Primer (supra) where Hon. Justice Mubiru explained the concept of a partnership. Counsel submits that the case is not applicable because in that case, the Judge was discussing a suit filed in the name of the firm, unlike the instant application where the applicant sues in its own name.

(d) Decision

(i) Competence of the applicant to file the application

12. The provisions of the Trademarks Act, 2010, govern trademark ownership and registration. Section 7(1) thereof provides that;
“A person who claims to be the owner of a trademark used or proposed to be used by him or her and is desirous of registering it shall apply in writing to the registrar in the prescribed form for registration in Part A or Part B of the register”
13. The question is who is “a person” that can apply and acquire trademark rights under the Act? The Trademarks Act does not defined the expression “a person”. However, it is trite law that a person is either a natural person or a juristic entity/corporate sole. In **Democratic Governance Facility V Uganda Youth Network and 4 others Civil Suit No.954 of 2020**, the Court explained the concept of personality as follows;
“Personality is the legal capacity to bear rights and duties. The “person” as a physical embodiment of a bundle of rights and duties, or as a physical entity to which such a bundle of rights and duties is imputed, is the basis unit in law of necessary for devising legal relationships. Only “persons “can be a subject and an object of legal relations. Consequently, suits can be filed by two kinds of persons: human and non-human. While natural persons acquire legal rights naturally by birth, juridical persons must have legal personality conferred on them by some legal process...”



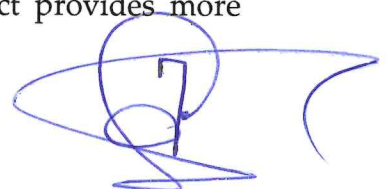
14. The applicant is not the owner of the trademark No. UG/T/2007/030004. Royal Steel, a partnership in which the applicant is a corporate partner, appears on the Register as the owner. I must hasten to add that in the first place, registering a business/firm name as an owner of a trademark is irregular. A person envisaged to apply and acquire trademark rights under section 7 is either a natural person or a legal person. A partnership is not a legal person in Uganda. The trademark therefore ought to have been registered either in the names of all partners trading as "Royal Steel" or if they so wished, in the name of the applicant—a recognized legal entity. It is therefore advised that the partners undertake steps to rectify this error. Nevertheless, I will proceed to determine the preliminary issues.

15. The applicant contends that this application was brought to defend the trademark rights of Royal Steel, and that as a partner, the action of the applicant is deemed the acts of all the partners within the meaning of section 5 of the Partnerships Act. Section 5 of the Partnerships Act states that;

"Every partner is an agent of the firm and his or her other partners for the purpose of the business of the partnership. (2) The act of a partner who does any act for the purpose of carrying on the ordinary course of business of the firm binds the firm and his or her partners, unless the partner so acting does not have authority to act for the firm in the particular matter, and the person with whom the partner is dealing — (a) knows that the partner has no authority; or (b) does not know or believe him or her to be a partner"

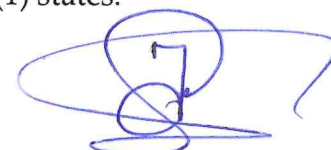
16. The question therefore is whether filing of this application to prevent trademark infringement is an act done for purposes of carrying on the ordinary business of the partnership. To resolve this issue requires first examining the ordinary business of the partnership firm. In its statement of particulars filed during registration of the partnership firm on the 29 March 2007, the nature of business of royal steel is indicated as "manufacturing of steel products". Manufacturing of steel products is the main business. However, a business will always have other associated businesses or activities including marketing and branding to aid its core business. Trademark registration may be such other step a firm may undertake to brand its products. In addition, to safeguard its market share, a firm may enforce its rights including filing of legal actions against infringers.

17. However, section 5 above is not conclusive to determine whether a partner has acted on behalf of the firm. Section 6 of the Partnerships Act provides more



guidance. It states; *“An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by any person authorised to bind the firm, whether a partner or not, is binding on the firm and all the partners.”*

18. Section 6 has two tests for determining intention to act and bind the firm. Each test is sufficient to determine whether the person acted on behalf of the firm. First, the person so acting must have done the act or instrument relating to the business of the firm, in the firm name. The applicant did not file this application in the firm name (Royal steel) and hence fail under this test. Alternatively, the person so acting must demonstrate an intention to bind the firm. The applicant has not demonstrated intention to bind the firm. In his submissions, Counsel has argued that the intention to act and bind the firm is inferred from the resolution and powers of attorney granted by the applicant. However, I do not agree with this inference. The said resolution dated 20th March 2019 and the attendant powers of attorney do not state that the applicant was acting as partner of Royal Steel. According to their wording, the applicant assumed that it was the rightful owner of the trademark. For instance, paragraph one of the resolution states; *“That the company authorizes Mr. Mwesigye Myers to appear for it in the matter it is to file against Royal Mabati Uganda Ltd in regard to its Royal Steel trademark infringement...”* The powers of attorney repeat the same statement.
19. The language in the resolution and power of attorney is possessive, for instance the expression *“its royal steel trademark”* in paragraph 1 of the resolution above. This demonstrates an erroneous assumption by the applicant that it was the registered owner of the trademark it seeks to protect by way of cancelling the Respondent’s mark. If this was not the case, the resolution and the power of attorney would have either expressly stated that the applicant is authorized to act for and on behalf of Royal Steel or the action would have been taken by all partners trading as “Royal Steel”.
20. Regulations 6(1) of the Trademark Regulations, 2012 (as amended) augments this position. It requires all documents submitted by a partnership in respect of trademarks registration and post-registration processes to indicate the names and signatures of all partners or in the alternative, a person acting for the partnership should have authority to sign on behalf of the firm. Regulation 6(1) states:



“Signature of documents by partnerships, companies and associations. (1)

A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any qualified partner stating that he or she signs on behalf of the partnership, or by any other person who satisfies the registrar that he or she is authorised to sign the document”

21. The applicant did not state or provide evidence that it has authority to sign the application on behalf of Royal Steel. This is corroborated by the pleadings filed in this application. In the pleadings filed in respect of this case, the applicant acted as if it was the proprietor of trademark UG/T/2007/030004. It appears the applicant discovered the fact of ownership by Royal Steel when the Registrar raised the same, and hence cannot be deemed to have acted with the intention to bind the firm nor assume authority by the mere fact of being a partner in the firm. In absence of express authority, it cannot be said that the applicant’s actions in this regard, bind the firm. I therefore find that the applicant did not act on behalf of the partnership firm.

(ii) The question of jurisdiction

22. Before I take leave of this matter, I note that the cause of action raised in this application is that of trademark infringement. Indeed the applicant alludes to it in its pleadings and submissions on the preliminary issue.

23. The gist of the applicant’s case is that the Respondent, whose trademark (the subject of these proceedings) is registered with respect to advertising services under class 35, and is alleged to be similar to the applicant’s “crown device” trademark registered in class in respect of steel products, now uses the same for steel products, hence creating confusion with the applicant’s products and infringes its trademark registered in respect of steel products in class 6. It is on that basis that the applicant seeks removal of the Respondent’s trademark. The issue of use of a trademark raises a question as to whether the Registrar has jurisdiction to determine a trademark infringement dispute.

24. Jurisdiction of a hearing officer is a serious issue. A decision taken without jurisdiction is null and void. Jurisdiction is a creature of statute and cannot be conferred by either consent or complacency of the parties nor by acquiescent of



the hearing officer. Where either of the party does not raise a jurisdictional challenge and it comes to the attention of the hearing officer, the officer has an obligation to investigate it. Exercising jurisdiction, which is not conferred by statute, is a usurpation of powers and an act done ultra-vires. Any questions of jurisdiction being so central to the authority of a hearing officer to undertake proceedings in a case before him or her, must be addressed at the earliest opportunity so that the hearing officer does not engage in a futile exercise (see *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1).

25. The concept of jurisdiction was extensively explained by the Court of Appeal in the case of *Owners of Motor Vessel "Lillians" v Caltex Oil Kenya Limited* [1989] KLR 1 in which Nyarangi JA at page 13 as follows:

"By jurisdiction, is meant the authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

26. Further, in *Desai v Warsama* [1967] 1 EA 351, the Court held that *"it is well established law that a judgement of court without jurisdiction is a nullity"*.
27. Jurisdiction takes many forms, but of particular importance in this application is subject matter jurisdiction. Subject matter jurisdiction is the requirement that a given court or tribunal has the power to hear the specific kind of claim that is brought to it. In *Ozuo Brothers Enterprises v Ayikoru Civil Revision No.2 of*



2016, Justice Stephen Mubiru explained jurisdiction as involving many features. He noted at page 4 of the ruling;

“The term may have different meanings in different contexts. It has been defined as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are joined or to the kind of relief sought (See: A.G of Lagos State v Dosunmu (1989) 3 NWLR pt.111, pg. 552 S C). It therefore means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon. A court must have both jurisdiction and competence in order to be properly seized of a cause or matter. Whereas Jurisdiction is a creature of statute and is the power conferred on a court by statute or the Constitution, a court is competent when:

(1) It is properly constituted with respect to the number and qualification of members.

(2) The subject matter of the action is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction (such as limitation or lack of capacity of the parties).

(3) The action is initiated in compliance with the rules of procedure and

(4) Any condition precedent to the exercise of its jurisdiction has been fulfilled.”

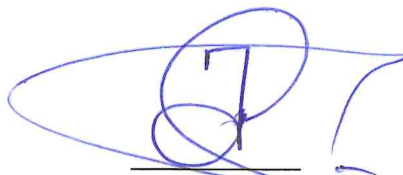
28. From the above authorities, it is clear that jurisdiction includes subject matter jurisdiction. The Trademarks Act, 2010 spells out the subject matter jurisdiction of the Registrar of trademarks.

29. The Trademarks Act clearly demarcates instances where the Registrar has concurrent jurisdiction with the High Court and where jurisdiction exclusively resides with Court. In cancellation proceedings, the jurisdiction of the Registrar is spelt out in the following sections; section 45 for removal on grounds of prior registration in the country of origin; section 48 for remove of defensive marks where conditions have ceased; section 46—removal on grounds of non-use, the Registrars powers of rectification under section 88 and cancellation of a trademark by way of correction under section 90(1) (c).

30. Section 88, under which the applicant brings this application provides: *“A person aggrieved by an omission, entry, error, defect or an entry wrongly remaining on the register, may apply in the prescribed manner to the court and subject to section 64, to the registrar, and the court or the registrar may make an order for making, expunging or varying the entry as the court or the registrar, as the case may be, may think fit.”*
31. The section does not confer onto the Registrar powers to determine whether the manner in which one trademark owner uses its trademark is or may be infringing another trademark owner’s rights, as basis for removal or cancellation of the alleged offending mark. A person who alleges that his or her trademark rights are infringed has other remedies in courts of law. For example, section 71 of the Trademarks Act provides for civil remedies. It states; *“A person whose rights under this Act are in imminent danger of being infringed or are being infringed may institute civil proceedings in the court for an injunction to prevent the infringement or to prohibit the continuation of the infringement”*
32. Besides enforcement of rights against infringers through civil actions, the Trademarks Act, 2010 creates several criminal offences targeting infringers of trademark rights. An aggrieved person has an option to lodge a complaint with competent authorities to commence prosecution of the suspects in courts of law.
33. Consequently, having determined that the applicant has no locus to file this application and that the Registrar has no jurisdiction to determine questions of infringement arising from the manner in which a registered trademark is used, I dismiss this application with costs.

I so Order.

Given under my hand, this 17th day of January 2024



Birungi Denis

Ass. Registrar of Trademarks