



**Rabow Company Limited v Lucky Bus DMCC & 13 others; Betting
Control and Licensing Board (Interested Party) (Civil Suit E485 of 2024)
[2024] KEHC 11159 (KLR) (Commercial & Admiralty) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL SUIT E485 OF 2024
A MABEYA, J
SEPTEMBER 26, 2024**

BETWEEN

RABOW COMPANY LIMITED PLAINTIFF

AND

**LUCKY BUS DMCC 1ST DEFENDANT
AFREEKEN TECHNOLOGY LIMITED 2ND DEFENDANT
KAPLAN & STRATTON ADVOCATES 3RD DEFENDANT
THE REGISTRAR OF TRADEMARKS 4TH DEFENDANT
SAFARICOM PLC 5TH DEFENDANT
REGISTRAR OF COMPANIES 6TH DEFENDANT
KEXIAN XIAO 7TH DEFENDANT
GE LI 8TH DEFENDANT
HANG MING 9TH DEFENDANT
JACINTA MORAA 10TH DEFENDANT
PURITY NJERI 11TH DEFENDANT
HONGDONG CHEN 12TH DEFENDANT
XU PENGFEI 13TH DEFENDANT
HANMENG QIU 14TH DEFENDANT**

AND



BETTING CONTROL AND LICENSING BOARD INTERESTED PARTY

RULING

1. On 19th and 20th August, 2024, two separate suits were filed, viz, HCCOM No. E485 of 2024 Rabow Company Ltd vs Lucky Bus DMCC & 14 others (“E485”) and HCCOM No. E 491 of 2024 Lucky Bus DMCC & Anor vs Rabow Company Ltd and 4 Others (“E491”).
2. Together with the complaints, the plaintiffs in either case lodged their respective Motions for various injunctive orders. In E 485, the Motion was dated 16/8/2024 while in E491 the Motion was dated 18/8/2024. Since the suits and the applications were inter-related, on 22/8/2024 the Court directed that both applications be responded to and they be heard together. On 27/8/2024, both applications were heard together but the Court directed that only 1 ruling will be delivered but the suits will remain separate.
3. This now is the ruling on those two applications. I propose to deal first with the motion dated 16/8/2024. However, since the 3rd and 4th defendants raised preliminary objections dated 21st and 23rd August, 2024, respectively, the Court directed that the Motion be argued and the objections be raised as part of the grounds of objection but in the ruling, the objections be determined first. I will therefore determine the Preliminary Objections first.

Preliminary Objections dated 21st and 23rd August, 2024

4. The 3rd defendant argued that the application and the entire suit is misconceived and bad in law and ought to be struck out. The grounds were that, the 3rd defendant as a law firm acted as an agent of a disclosed principal, the 1st defendant. That no suit can therefore lie against it. That under section 134 of the *Evidence Act*, the 3rd defendant is statutorily barred from disclosing any communication between itself and its clients on the assignment of the Trade Mark No. 109421 and that its name should be struck out of the suit.
5. On his part, the 4th defendant objected to the Motion and the suit on the grounds that by virtue of sections 25(8) and 28(2) of the *Trade Marks Act*, this Court lacks jurisdiction to entertain the suit as it can only do so as an appeal from his decision.
6. The 3rd defendant submitted that its role in the impugned transaction was to act as counsel for the 1st defendant. That as agent of a disclosed principal (the 1st defendant), it could not be sued. The cases of Victor Mabachi & Anor vs Nurtun Bates Ltd [2013] eKLR and City Council of Nairobi vs Wilfred Githua t/a Githua Associates & Anor [2010] eKLR were cited in support of those submissions. That as advocates, the 3rd defendant was barred by section 134 of the *Evidence Act* from revealing its communication with its client. The case of Tom Ojienda t/a Tom Ojienda & Associates Advocates vs Ethics and Anti-Corruption Commission & 5 Others [2016] eKLR was relied on for that contention. It was also submitted that the 3rd defendant’s right to privacy under Art. 31 of *the Constitution* would be breached by the sustenance of this suit against it.
7. On his part, the 4th defendant submitted that under sections 25 and 28 of the *Trade Marks Act*, any decision of the Registrar is to be appealed to the High Court. That these proceedings were not in the nature of an appeal. That in the premises, this Court is bereft of any original jurisdiction to entertain the application and the suit generally. The case of Asenath Maina vs *The Registrar of Trade Marks*



HCOM E 162 of 2022 was cited in support of that submission. That sections 25 and 28 were specific as opposed to section 35 of the *Trade Marks Act*.

8. In response, the plaintiff submitted that the current proceedings were proceedings for expungement of a Trade Mark Act under sections 35 and 53 of the Act. That the Court had original jurisdiction to consider the matter. That there was no decision that had been issued by the Registrar that could be appealed against. That as regards the 3rd defendant, the privilege sought to be relied on can be impeached if used for improper purpose. That since some particulars of fraud had been pleaded against the 3rd defendant, the privilege cannot stand. That in any event, the communication had already been disclosed in Kibera Cr. Case No. 1667 of 2024 R vs Xiao Kexia & Others.
9. In *Mukisa Biscuits vs West End Distributors Co. Ltd* [1969] EA; the court held that a preliminary objection is only to be raised where the facts pleaded by the other side are not contested. It cannot be raised where any facts are to be ascertained.
10. In the present case, the objection by the 4th defendant is based on disputed facts. The plaintiff is challenging the registration of the trade mark on the basis that it was fraudulently registered. The 4th defendant is being accused of failing to advertise the application for the registration of the assignment and transmission of the trade mark to the 1st defendant. Of course the fraud has been strenuously opposed by the 1st defendant.
11. Further, the plaintiff contends that the suit is brought under sections 35 and 53 of the *Trade Marks Act*. Under the said provisions, a party is at liberty to choose either to approach the Court directly or the Registrar of Trade Marks in the first instance. The 4th defendant contended that under sections 25 and 28 of the Act, the plaintiff should have first challenged the assignment before the 4th defendant and only come to court by way of an appeal.
12. I have considered the provisions relied on, to wit, sections 25, 28, 35 and 53 of the Act. While sections 25 and 28 are clear that the decisions of the Registrar are to be challenged before him first, the sections do not deal with circumstances like the present one, where, a party is challenging the whole process and alleging that there has been fraud in the acquisition of the assignment. Reading through the entire Act, the Act only provides specific instances when one is to challenge registration of a Trade Mark but it has not provided for instances of alleged fraud.
13. In my view, the suit being one seeking expungement of a Trade Mark for alleged fraud, the challenge is under sections 35 and 53 of the Act and not 25 and 28. Accordingly, the objection by the 4th defendant is bereft of merit and is rejected.
14. As regards, the 3rd defendant, the objection is based on two broad principles; to wit, that there can be no action against a disclosed agent and secondly the privilege given to advocates under section 134 of the *Evidence Act* is at risk.
15. In *City Council of Nairobi vs Wilfred Kamau Githua t/a Githua Associates* [2016] eKLR, the Court of Appeal held: -

“In the circumstances of this case, the 2nd respondent cannot be sued as agent where there is a disclosed principal (the appellant). There is therefore no cause of action against the 2nd respondent. The principle of common law is that where the principal is disclosed, the agent is not to be sued. In the circumstances of this case, the principal (the appellant) is disclosed and the agent (the 2nd respondent) cannot therefore be sued. There are no factors vitiating



the liability of the disclosed principal. Accordingly, the enjoinder of the 2nd respondent in this case is unwarranted.”

16. It was submitted by the plaintiff that there were separate and distinct particulars of fraud pleaded against the 3rd defendant in the plaint. I have considered paragraph 42 of the plaint. There are a total of 8 alleged particulars of fraud and negligence pleaded against the 3rd defendant. Looking at them, there is nothing to show that any of the alleged acts was done or undertaken outside the 3rd defendant’s mandate as Advocates for the 1st defendant.
17. It is a well-known fact that Advocates wait in their Chambers and always deal with instructions given upon them in good faith. In the view of this Court, there is nothing in the alleged particulars of fraud and negligence that show that the 3rd defendants were not acting upon the instructions of a disclosed principal. The disclosed principal itself is a party in these proceedings and its role in the alleged fraud has been pleaded.
18. In view of the foregoing, I find and hold that there is nothing on record to persuade this Court to depart from the well-founded common law principle that no action can lie against an agent of a disclosed principal.
19. The second objection is the injunction under section 134 of the *Evidence Act*. The privilege is only excluded where the advocate in furtherance of an illegal act or an advocate observes in the course of his employment as such that any crime or fraud has been committed.
20. The acts complained of against the 3rd defendant by themselves were not illegal per se. There is nothing to show that the 3rd defendant was acting otherwise than as advocates of the 1st defendant in an assignment and transmission of a trade mark. The view the Court takes is that, the facts pleaded against the 3rd defendant do not bring it within the proviso to section 134 of the *Evidence Act*.
21. In any event, I have looked at pages 13 to 15 of the plaint. The plaintiff has sought a total of 13 prayers, yet there is not a single prayer that has been prayed against the 3rd defendant.
22. In view of the foregoing, I find that the objection by the 3rd defendant has merit and the suit against it is struck out with costs.

Motion dated 16/8/2024

23. This is an injunction application seeking Anton Pillar, Prohibitory and Mandatory injunctions against the defendants. It further sought leave to allow the plaintiff enter the premises of the 1st and 2nd defendant, search, seize and take various items, and to direct the deposit of Kshs. 49,977,830/= in an escrow account managed by the plaintiff’s Advocates.
24. The application was supported by the affidavits and further affidavits of Ann Wangari Kinyugo sworn on 16/8/2024 and 23/8/2024, Chen Zhencai sworn on 26/8/2024, Cornelius Joe Kihungu Muraya and Bi Yongxin, both sworn on 23/8/2024.
25. The grounds for the Motion were that; the plaintiff was the owner of the Trade Mark No. 109421 registered on 1/10/2019 “the trade mark”. That it is also the proprietor of the Copyright work “Bangbet” registered on 19/8/2019. That it operates a robust online betting platform whereon it engages its customers.
26. That in or about June, 2021, the plaintiff engaged the 1st defendant to host the plaintiff’s betting platform and operating software. That the 1st defendant requested the plaintiff for its registration documents which it subsequently used in a fraudulent assignment of the trade mark. That the 1st and



- 2nd defendant had illegally and fraudulently taken control of the plaintiff's platform and unauthorized access to its betting platform and Mpesa accounts.
27. That as a result, the 1st, 2nd, 5th and 7th to 14th defendant illegally transferred a total sum of Kshs. 49,977,830/= from the plaintiff's paybill account No. 937552. That further, the plaintiff has become aware that the 2nd defendant has changed its name from Afrekeen Technology Ltd to Bangbet Ltd.
 28. It was further contended that the 2nd defendant had fraudulently caused the firm of Kaplan & Stratton Advocates to draft a Deed of Assignment of its Trade Mark. That the plaintiff did not give instructions for the preparation of the said Deed and a Criminal Case has since been lodged against the 7th defendant.
 29. Chen Zhengai, a former director of the plaintiff, denied having engaged in any negotiations or discussions for the sale or assignment of the Trademark "Bangbet".
 30. The 1st, 2nd and 7th defendant opposed the application vide the Affidavit of Xiao Kexian sworn on 23/8/2024. He stated that the 1st defendant was an International corporation which had enlisted the plaintiff as its proxy in Kenya under which it had been carrying on business under the trade name Bangbet. That there had been deliberations between the plaintiffs' beneficial owner one Li Cong and the 1st defendant's director, one Yin Yonke on the sharing of profits between the plaintiff and the 1st defendant on the use of Bangbet and GameMania.
 31. That the officials of the plaintiff and the 1st defendant were engaged in correspondence on profit sharing formulae. That the registration of the Bangbet was procured by the plaintiff as a proxy for the 1st defendant. That the plaintiff later assigned the said trade mark to the 1st defendant vide a Deed of Assignment dated 2/3/2021 and a Certificate of Registration issued therefor. That under section 48 of the Act, such Certificate was prima facie evidence of ownership of the Trade Mark.
 32. Mr. Kexian denied that allegations that the systems of the plaintiff had been illegally accessed and money transferred therefrom. He objected to the production of the Mpesa statements of the 7th to the 14th defendant. That the change of name of the 2nd defendant to Bangbet Ltd was regular. He averred that Zhencai Chen was a director of the plaintiff between 2018 and 2022 and had an alias name, Owen Chen. That the later was the one who executed the Deed of Assignment on behalf of the plaintiff under the alias name. That the 1st defendant has since popularized the said Trade Mark and had it registered under various jurisdictions including the Africa Intellectual Property Organization (OAPI) under licence No. 118904, European Union (trademark No. 018340581), Rwanda (RW/1/2020/648), Democratic Republic of Congo (04899/2020) and Uganda (UG/1/2020/68483). He urged that the injunctive orders sought be declined.
 33. The 4th defendant opposed the application vide the affidavit of Concilia were sworn on 23/8/2024. She averred that she was an Assistant Registrar of Trade marks. She confirmed that the Trademark was first registered in the name of the plaintiff on 18/8/2020. That on 11/6/2022, the Registrar of Trade Marks received documents that resulted in the change of name, address and Assignment of the Trademark.
 34. That the 4th defendant was satisfied with the documents presented and duly effected the changes sought. She denied any wrong doing on the part of the 4th defendant. That there was no requirement for the advertisement of the assignment as the same was done in connection with the goodwill of the business. That in any event the plaintiff should have filed an appeal.
 35. The parties filed their respective submissions which were ably highlighted on 27/8/2024 and which I have carefully considered.



36. This is an injunction application. The principles applicable are well known as set out in *Giella vs Cassman Brown* [1969] CA. An applicant must establish a prima facie case with a probability of success, he must demonstrate that he would suffer irreparable loss if the injunction sought is not granted, and that if in doubt, the Court will determine the matter on a balance of convenience.
37. On prima facie, the applicant should establish that its right has been infringed so as to call for a rebuttal or explanation by the defendants. See *Mrao vs First American Bank* [2003] eKLR. The plaintiff's case is that it has been the registered proprietor of the Trade Mark since August, 2020. That it engaged the services of the 1st defendant to host its betting platform www.bangbet.com in June, 2021 That however, the 1st and 2nd defendant used the opportunity to illegally and fraudulently take control of its platform and betting systems. That thereafter the defendants fraudulently assigned its Trademark to the 1st defendant. That none of its officers executed the Deed of Assignment.
38. On the other hand, all the defendants deny the plaintiff's allegations. The 1st defendant admit that the Trademark was originally registered in the plaintiff's name, but as a proxy for the 1st defendant in Kenya. That there had been communication between the beneficial owner of the plaintiff and the 1st defendant on how to share profits. That it culminated in the signing of the Deed of Assignment dated 2/3/2021. That there was no fraud as alleged by the plaintiff.
39. I am alive that at this stage, I am dealing with a simple application for injunction based on mere allegations on affidavits. I cannot make any firm findings. That is to be left to the trial court which would examine the evidence that would have been tested through cross examination.
40. The first prima facie uncontestable finding is that, the Trade Mark the subject of the suit was initially registered in the name of the plaintiff and a Certificate of Registration issued accordingly. The plaintiff's case is that the same was thereafter fraudulently assigned to the 1st defendant. That none of its directors signed the Assignment.
41. This Court allowed the plaintiff to file further affidavits in answer to the responses by the defendants. In their response through Xiao Kexian, the 1st, 2nd and 7th defendant made firm allegations as follows; that the plaintiff's registration of the Trade Mark was only as a proxy of the 1st defendant in Kenya; that the real beneficial owner of the plaintiff was in communication with the 1st defendant culminating in the Deed of Assignment dated 2/3/2021; that Mr. Chan Zhencai (who swore an affidavit on 26/8/2024) had an alias name, Owen Chan and that he is the one who executed the Deed of Assignment).
42. All these were very specific allegations that were directed at rebutting the plaintiff's allegations of fraud. Indeed, communication was produced by Mr. Xiao showing that a Mr. Li Cong, whom he alleged to be the real beneficial owner and principal of the plaintiff, was in communication with the 1st defendant on their betting business in this country on Bangbet and Gamemania.
43. In her further affidavit, Anne Wangare Kinyugo did not deny any of the said specific allegations that seemed to rebut her earlier allegations. Further, even Chen Zhencai who swore an affidavit on 26/8/2024 did not deny the allegations by XIAO that he had an alias name of Owen Chen. He only denied having signed the Deed of Assignment dated 2/3/2021. The Court notes that whilst there was a very specific allegation of his having an alias, he chose not to address it. He avoided it. That is information which is in his own special knowledge.
44. It must be recalled that for Anton Pillar and interlocutory Mandatory injunctions to be issued, strong evidence is required. These have been sought in this Motion. The Court must have a strong feeling that the case presented is strong enough and has high chances of succeeding at the trial before it can



grant such orders. This is so because such orders cannot be undone. They are summary in nature and cannot be reversed.

45. There must exist exceptional and special circumstances to warrant the grant of such orders. The standard required for interlocutory mandatory injunction is much higher than in ordinary prohibitory injunctions. See *Nation Media Group & 2 Others vs John Harun Mwau* [2014] eKLR.
46. On my part, I have perused the correspondence produced by the parties. There seem to have been a long engagement between them from the year 2020. I have seen the communication by one Mr. Li Cong and Mr. Yin Yonke. I have seen communication by Mr Owen Chen who is said to be the one and the same person as Mr. Chen Zhencai. I have seen the Deed of Assignment dated 2/3/2021, the view I take is that on a balance of probability, the plaintiff has not established a prima facie case. The allegations made cannot be established at this stage but after oral testimonies. The allegations made by the plaintiff have been rebutted and or answered by the defendants. Accordingly, no prima facie case has been established. The defendants rebuttals were never challenged nor answered.
47. On irreparable loss, the nature of the loss has not been established. With the firm undenied allegations that the plaintiff was a proxy of the 1st defendant as far as the registration of Bangbet was concerned, and, that its principal and beneficial owner has approved the arrangement, the Court sees no irreparable loss.
48. In any event, the balance of convenience tilts in favour of maintaining the status quo. The 1st defendant has the Trademark assigned to it and has had it registered in over 4 territories, Uganda, Rwanda, Ghana and EU.
49. Accordingly, the Motion dated 16/8/2024 is without merit and is dismissed.

Motion dated 19/8/2024 (HCOM E 491/24)

50. This is also an injunction by the plaintiffs in E498 of 2024. It was brought an application under Order 40 of the Civil Procedure Rules. It sought various prohibitory injunctive orders, orders to freeze accounts and paybill nos as well a mandatory order for the interested party to furnish certified statements on A/C No. 0100005547932 and paybill Nos. 937552 and 999880 for the period 1/6/2024 to date.
51. The plaintiff's case is that it is the registered owner of the trademark registration No. TM 109421 ("the TradeMark") in the name Bangbet. That it had acquired the same for value and had been using the same until July 2024 when the Certificate of Registration of the Assignment was issued. That the 1st defendant has started a parallel business by the name Betmania which is materially similar to that of the plaintiffs thereby causing competition.
52. That while the business is hosted by the 1st defendant, the 1st plaintiff is in exclusive control of the software and only relied on the 1st defendant to process payments under the paybill No. 999880.
53. That the 1st plaintiff discovered that funds were being transferred from the said paybill No to the 1st defendant's paybill No. 937552 in the name of Bet Mania and A/C No. 0100005547932 at Stanbic Bank Kenyatta Branch without the knowledge permission or consent of the 1st plaintiff. That the defendants had changed the paybill from Bangbet to Betmania in order to recruit the plaintiff's customers. That this will diminish the value and intellectual property in the TradeMark Bangbet.
54. The plaintiff contended that the defendants were the plaintiff's proxies in Kenya and were to act in good faith towards assets in their possession. That the 2nd plaintiff opened a Paybill No. 569699 under the Trade Mark but the 1st interested party has arbitrarily suspended it. That there is now pending a



- dispute before the Registrar of Trademarks on application No. 114757. That the plaintiffs' business stand to suffer greatly unless the Court intervenes.
55. The defendants opposed the application vide the affidavit of Anne Wangare Kinyugo sworn on 23/8/2024. She swore that the 1st defendant first ventured into betting business in 2014 vide Gamemania and Betmania. Later, it registered the Trademark Bangbet in 2019 and caused to be registered a copyright work "BANGBET" in the Artistic Category.
 56. That the 1st defendant operates an online betting platform through website www.bangbet.com through which customers place their bets and manage their accounts. That the 1st defendant contracted the 1st plaintiff to host the 1st defendants betting platform www.bangbet.com and operating software.
 57. That in July, 2024, the 1st defendant received a letter from the 3rd Interested Party for a No objection letter to the use of the Trademark Bangbet by the 2nd plaintiff. The 1st defendant strenuously objected to the same. That as a result, the 3rd interested party declined the 2nd plaintiff's application and advised it to seek legal redress. That the 3rd interested party directed the 1st interested party to suspend paybill Nos. 569699 and 3039787 as the plaintiffs were conducting business thereon using the Trademark Bangbet.
 58. The defendants further contend that the plaintiffs had fraudulently assigned themselves its trademark. That the firm of Kaplan and Stratton which acted as an agent in the assignment was unable to produce the particulars of Owen Chen. That the 1st defendant had not authorized the said assignment.
 59. It was further contended that the 1st defendant was the only one licenced to trade using the Trademark Bangbet. That the plaintiffs were illegally trading without a licence. That Betmania is a trademark registered in favour of the 1st defendant in 2016 and its paybills cannot therefore be frozen. That the present application was a replica of CMCC E 670 of 2024 Lucky Bus DMCC vs Rabow Company Ltd & Others.
 60. The 1st interested party responded to the application vide the affidavit of Daniel Ndaba sworn on 26/8/2024. He explained the sequence of events on how the paybill No. 569699 was suspended and later unsususpended. He explained that the Interested Party was prepared to comply with the orders of the court.
 61. Xiao Kexian swore a further affidavit on 26/8/2024 in rejoinder to the averments of Anne Wangare Kinyugo. He stated that there had been due process in the registration of the Assignment of the Trade Mark as confirmed in the Affidavit of the Assistant Registrar of Trademarks, Concillia Were of 23/8/2024, in E 485 of 2024. He denied that the 1st defendant owned www.bangbet.com. That the suit herein was to challenge the use of the name Bangbet by the 1st defendant. He denied that the Assignment of the Trademark to the 1st plaintiff was fraudulent. He produced emails claiming that Chen Zhencai was using the name Owen Chen interchangeably and had been a director of the 1st defendant before 2022. That the suit in the lower court was not determined on merit.
 62. I have considered the opposing contestations on prima facie, the plaintiffs case is that the Trademark Bangbet had been assigned to the 1st plaintiff in March, 2021 and it was the registered proprietor thereof. That the 1st defendant was a proxy of the 1st plaintiff in Kenya. That the 1st defendant was acting in breach to its fiduciary duty. The defendants answer to those claims are that, the assignment and transmission was obtained fraudulently. The 1st defendant pleaded several particulars of the alleged fraud.
 63. This is an injunction application. At an interlocutory stage, the Court is not supposed to express any firm finding especially on disputed facts. The Court cannot be able to verify truthfulness or otherwise



of the averments contained in the affidavits. It is the trial court that can make informed decision on such disputed facts on tested evidence at the trial.

64. What is before Court is seriously disputed facts. It is clear that the parties have had a relationship dating back to 2020. The correspondence on record is clear on that. The parties are not clear on the nature of the dealings they have had. One issue that the 1st defendant has not denied, is the persistence of the 1st plaintiff that the 1st defendant has been its proxy in Kenya.
65. There is the fact of one Zhencai Chen who is said to use an alias Owen Chen. It is claimed that he is the one who executed the Deed of Assignment. The fact of his alias has not been denied. The emails produced to that fact were neither denied nor challenged. Although the 1st defendant has stated on oath that the Deed of Assignment was a forgery and pleaded fraud, those facts have been denied on oath. They can only be established upon the evidence being tested through cross examination. The fact that Kaplan & Stratton do not have the particulars of the alleged Owen Chan, the affidavit of Xiao Kexian has explained him.
66. The view the Court takes is that, in the special circumstances of this case, commerce and/or business must continue. Section 46 of the Act provides: -

“In all legal proceedings relating to the validity of a registered trademark (including applications under section 35), the fact that a person is registered as proprietor of the trade mark shall be prima facie evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof”.
67. As at now, the trademark Bangbet is registered in favour of the 1st plaintiff. The same has been challenged in HCOM E 485 of 2024. That suit is still pending. As it were, the registration is still in favour of the 1st plaintiff. Most of the averments by the 1st plaintiff as to how the assignment was obtained has largely remained unchallenged. Mr. Zhencai Chen has not denied he is alias Owen Chen who signed the Deed of Assignment. The 1st defendant has not denied that it was a proxy of the 1st plaintiff in Kenya as far as the use of the Trademark Bangbet and betting was concerned.
68. The 1st defendant has not challenged nor denied the assertion by the Assistant Registrar of TradeMark in her affidavit of 23/8/2024 that all the correct procedures were followed in the registration of the assignment of the trademark “Bangbet” in favour of the 1st plaintiff. That there was no necessity or requirement to advertise the same as contended by the 1st defendant.
69. All the actions that were undertaken against the plaintiffs and complained of, were on the basis that the plaintiffs were infringing on the 1st defendant’s trademark, which is not the case. The 1st defendant must first surmount the registration of the assignment before it can reclaim the right to use the said trade mark.
70. In view of the foregoing, the Court finds that the plaintiffs have established a prima facie case with a probability of success.
71. On irreparable loss, it is clear that if the business of the plaintiffs use of its intellectual property is not safeguarded, it may irredeemably suffer. The loss may not be compensated by an award of damages. Accordingly, the Court finds that the plaintiffs are likely to suffer irreparable loss and damage.
72. In any event, the balance of convenience tilts in favour of allowing the plaintiff’s to continue trading undisturbed.
73. Accordingly, the application is merited and is allowed with costs.



74. In view of the foregoing, the Court makes the following orders: -

- a. The preliminary objection by the 4th defendant dated 23/8/2024 is dismissed with costs.
- b. The preliminary objection by the 3rd defendant dated 21/8/2024 is allowed with costs and the suit against it struck out.
- c. The application dated 16/8/2024 in E 485 of 2024 is dismissed with costs.
- d. The application dated 18/8/2024 in E491 of 2024 is allowed in terms of prayer Nos. 5,6,8, 9 and 10 with costs.
- e. Due to the nature of these cases, an order hereby issues consolidating the HCCOM No. E485 of 2024 and E491 of 2024. HCCOM No. E 485 of 2024 to be the lead file.
- f. The defendants do file and serve their respective defences within 14 days of this order.
- g. The parties do undertake pre-trials within 60 days before the Deputy Registrar for expedited trial.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024

A. MABEYA, FCI ARB, EBS

JUDGE

