



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

HCCC NO. E 263 OF 2020

THERMOS HONG KONG LIMITED.....1ST PLAINTIFF

NABICO ENTERPRISES LIMITED.....2ND PLAINTIFF

VERSUS

DOSHI IRONMONGERS LIMITED.....DEFENDANT

RULING

1. In this suit, Thermos Hong Kong Ltd (**T.H.K or the 1st Plaintiff**) and Nabico Enterprises Ltd (**Nabico or the 2nd Plaintiff**), allege a threat of or actual infringement on Trademarks Nos. 567, 568, 569, 570, 571 and 22376. The alleged infringer, Doshi Ironmongers Limited (**Doshi or the Defendant**), not only denies the allegations but, by way of counter claim, seeks, inter alia, an expungement and revocation of the assignment and registration of those Trademarks. These will be amongst other matters that the Trial Court will be called upon to hear and determine.

2. For now, T.H.K and Nabico invite this Court, through a Notice of Motion dated 28th July 2020, to grant them the following orders:-

(d) THAT pending the hearing and determination of this suit a temporary order of injunction be issued restraining the Defendant (whether acting by its servants or agents or any of them or otherwise howsoever) from infringing on the First Plaintiff's Registered Trade Marks Nos. 567, 568, 569, 570, 571 and 22376 and interfering with the Plaintiff's rights to import and sell goods bearing the mark 'THERMOS' in Kenya.

(e) THAT pending the hearing and determination of this suit a temporary order of injunction be issued restraining the Defendant (whether acting by its servants or agents or any of them or otherwise howsoever) from advertising or communicating to the public through print and social media that it has the exclusive right to use the trade marks 'THERMOS'.

3. At this interlocutory stage the Court resists any invitation to make firm findings on contested issues that are premised on untested evidence. That is a call for the Trial Court. A brief background to the dispute.

4. Although Doshi impugns their validity, T.H.K is registered as the proprietor of Trademarks No. 567 Thermos (word) in class 21, 568 Thermos (word) in class 14, 569 Thermos (word) in class 21, 570 Thermos (word) in class 21 and 571 Thermos (word) in classes 2, 14, 18, 20, 22, 26, 29, and 34. The more controversial one is that it is the registered holder of Trademark No. 22736 Thermos (word + device) in class 21.

5. T.H.K also states that it has been selling flasks, bottles and culinary utensils bearing the Trademark "THERMOS" since 1920 and that by virtue of long use, the marks have been in the Kenya for almost a century and are well known marks in accordance with section 15A of the Trade Marks Act.

6. The Plaintiffs are aggrieved by two advertisements placed by the Doshi in two newspapers; of 17th June 2020 in the 'Daily Nation' and of 23rd July 2020 in the 'Standard'. The contents of these two advertisements, which are at the heart of the Motion before Court, are discussed in greater detail later in this decision. The Plaintiffs sees these as acts of infringement or interference.

7. A further complaint by the Plaintiffs is that in a letter dated 23rd July 2020, the Defendant's lawyers Olunga & Co. Advocates wrote to Nabico demanding that it (Nabico) should immediately cease the importation, distribution and trading its "Thermos" branded goods and

directing it to recall the goods from the market.

8. Ultimately, the Plaintiffs seeks the following orders:-

a) A declaration that the Defendant is not entitled to interference or restrain the use of the THERMOS mark by the First Plaintiff by virtue of the First Plaintiff having continuously used the mark in accordance with Section 7 and 10 of the Trademarks Act.

b) A permanent injunction to restrain the Defendant, whether by itself, its directors, officers, employees, or agents from infringing on the First Plaintiff's Registered Trademarks Nos. 567, 568, 569, 570, 571 and 22376.

c) A declaration that the threats made by the Defendant in its letter dated 23rd July 2020 and the advertisement in the Standard of 23rd July 2020 contravene the First Plaintiff's rights under Sections 7 and 10 of the Trademarks Act.

d) A permanent injunction to restrain the Defendant from interfering with the First Plaintiff's sale its goods to any retailers in respect of goods sold under TM 567, 568, 569, 570, and 22376 in respect to the mark 'THERMOS' Under Section 10 of the Trademark Act.

e) A permanent injunction to restrain the Defendant from publishing any material in the print and social media in respect of the First Plaintiff's TM 567, 568, 569, 570, and 22376 in respect to the mark 'THERMOS'.

f) Costs of this suit.

g) Any further or other order as this Honourable Court may deem fit.

9. Doshi resists the claim by the Plaintiffs. Doshi's case is that T.H.K obtained registration of the trademarks fraudulently, illegally and irregularly. Doshi sets out what it sees as the particulars of fraud and illegality in paragraph 5 of the Defence and again in its Counterclaim.

10. Regarding Trade Mark No. 22376, Doshi's case is that the Trademark is a device and not word, more specifically that it is THERMOS SUN AND SNOWFLAKE (device) and not THERMOS (word). Featuring as a linchpin of the Defence is that Trademark 22736 is not an independent Trademark but is associated with Trademark No. 17003 which has since been quashed.

11. Doshi asserts that Trademark No. 17003 was taken away from T.H.K through a Judgment in Mombasa Civil Appeal No. 251 of 2017 and has since been registered in the name of Doshi under new registration as Trademark No. 59464 'THERMOS' in class 21. It argues that Trademark No. 22376 cannot be separated from Trademark No. 17003 whose ownership and all Trademarks associated with it has already been determined by the High Court and is now pending in the Court of Appeal.

12. It is the case of Doshi that T.H.K's claim over Trademark No. 22376 is dogged by illegality and fraud. For example, that T.H.K. is not a proper assignee of the mark as the Deed of Assignment of 21 November 2011 is for Trademark 22356 and not 22376.

13. Doshi defends the two publications and its advocate's letter as being truthful. It then seeks the following orders in the Counterclaim:-

1. A declaration that the assignment and subsequent registration of Trademarks Numbers Nos. 567, 568, 569, 570, 571 and 22376 "THERMOS" in Classes 13, 14, 15, 16, 50 and 21 respectively in the name of THERMOS HONG KONG LIMITED is illegal, null and void.

2. Assignment, registration and entry into the Register of THERMOS HONG KONG LIMITED as the proprietor of Trademarks Numbers Nos. 567, 568, 569, 570, 571 and 22376 "THERMOS" in Classes 13, 14, 15, 16, 50 and 21 respectively be and is hereby expunged and revoked forthwith.

3. An order be and is hereby issued directing the Registrar of Trademarks or any authorized officer to rectify the register by removing and expunging the names of THERMOS HONG KONG LIMITED therefrom as the proprietor of Trademarks Numbers Nos. 567, 568, 569, 570, 571 and 22376 "THERMOS" in Classes 13, 14, 15, 16, 50 and 21 respectively.

4. There be and is hereby issued an order of permanent injunction to restrain THERMOS HONG KONG LIMITED and NABICO ENTERPRISES LIMITED and/or their agents, employees, assigns or any other person acting on their behalf from manufacturing, importing, distributing, selling, stocking/marketing, advertising, publishing or in any other way dealing with goods, items and products under Trademarks Numbers Nos. 567, 568, 569, 570, 571 and 22376 "THERMOS".

5. There be and is hereby issued an order of permanent injunction to restrain THERMOS HONG KONG LIMITED and NABICO ENTERPRISES LIMITED and/or their agents, employees, assigns or any other person acting on their behalf from infringing on or any other way interfering with the Plaintiff's Trademark No. 59464 "THERMOS" (word) in Class 21.

6. Costs of this Counterclaim be paid by the Defendants jointly and severally.

7. Any other and further relief this Court may deem just to grant.

14. The Court has considered the issues raised and the submissions of counsel in this matter. Although the arguments may have been somewhat lengthy, the Court thinks the matters raised at this interlocutory stage to be much narrower and does not intend to rehash the arguments made.

15. This is an application for temporary orders of injunction and the principles set out in **Giella vs Cassman Brown 1973 E.A. 358** stand out as the true north.

16. While the Plaintiffs seek to rely on the registration of the Trademarks to press for this Court's protection, the Defendant's Defence and Counterclaim question the validity of those marks and indeed seek their expungement. Yet for now, and before a pronouncement is made as to the propriety or otherwise of their registration and/or assignment, section 46 of the Trademark's Act (the Act) has a place at this interlocutory stage. It reads:-

“Registration to be prima facie evidence of validity;

In all legal proceedings relating to a registered trade mark (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.”

17. At this stage of the proceedings the Court will not be making a verdict on the rectitude or impropriety of the process leading to the registration of Trademarks now in the name of T.H.K. and has to accept that the registration of those Trademarks as revealed in the certificates for use in legal proceedings annexed to the affidavit of Alex Huang sworn on 28th July 2020 as prima facie evidence of the validity of the original registrations of the Trademarks and of all subsequent assignments and transmissions. And I need to say a little more regarding Trademark 22376. One argument by Doshi is T.H.K was assigned Trademark 22356 and not 22376. On the other hand, T.H.K states that the deed of assignment had an error and the true number is reflected in registration certificate. Again, at this stage, the Court must fall back to the certificate for use which gives proprietorship of Trademark No 22376 to T.H.K. Another reason why this matter need not hold the Court much longer is because a plank of the Defence and Court proceeds on the premise the T.H.K is the proprietor of the Trademark and even prayers that it be expunged from the register. A clear concession that Trademark No 22376 exists and its registered proprietor through assignment or otherwise is T.H.K.

18. The next issue for this Court's consideration is in respect to which class the Trademarks are registered. This is because the Plaintiff pleaded change of class. In Paragraph 10 of the Defence, the Defendant states that Trademark No. 567 is for class 13, No. 568 for class 14, No. 569 for class 15, No. 570 for class 16 and No. 571 for class 50 and that the listed classes have never changed and remain the same to date.

19. The law is that under the provisions of Section 6 of the Act, a Trade Mark is registered in respect of particular goods or services which are classified in accordance with the international classification of goods and services and any figurative elements of the mark in accordance with the International Classification of the Figurative Elements of Marks. Section 6 reads;

“6. (1) A trade mark shall be registered in respect of particular goods or services, which shall be classified in the manner specified in subsection (2).

(2) The goods and services in respect of which registration of a mark is applied for shall be classified in accordance with the International Classification of Goods and Services and any figurative elements of the mark shall be classified in accordance with the International Classification of the Figurative Elements of Marks:

Provided that where goods or services belonging to several classes according to the International Classification of Goods and Services have been included in the same application, the Registrar shall incorporate the several classes of goods and services for the purpose of registration.”

To be noted is that the classification may be revised and amended from time to time.

20. On this matter the Plaintiff produced a list of classes of the Nice classification, 11th Edition 2018. By dint of the provisions of Section 54A, this Court has power to receive this list as evidence, Section 54A reads:-

“Nice Agreement receivable in evidence;

The Nice Agreement concerning the International Classification of Goods and Services for the purpose of the Registration of Trade Marks of 15 June, 1957 and all revisions thereof together with the publications of the World Intellectual Property Organization of Geneva relating to the Agreement may be received in evidence before any court or Registrar and shall be taken into account by the Registrar in relation to his duties under this Act.”

21. My finding therefore is that there is prima facie evidence that the 1st Plaintiff is registered as the propriety of the following Trademarks; No. 567 Thermos (word) in class 21, 568 Thermos (word) in class 14, 569 Thermos (word) in class 21, 570 Thermos (word) in class 21 and 571 Thermos (word) in classes 2, 14, 18, 20, 22, 26, 29, and 34.

22. The Court then narrows down its attention to Trademark No 22376 which received a more vicious attack. In addition to what this Court has already discussed concerning this Trademark, there is a contest as to what it protects. The Plaintiff states that it protects Thermos (word and device) while the Defendant is emphatic that it is only in respect to THERMOS (word). In pressing its proposition, the Defendant,

through the replying affidavit of Ashok Labhshanker Doshi sworn on 18th August 2020 gives what it understands as events leading to registration of that mark.

23. The Trial Court will obviously have occasion to interrogate the allegation with some detail, if called upon. For now, I have to rely on the certificate of use for legal proceedings and what it tells the Court. The certificate displayed by the Plaintiff shows that this Trademark is in respect to both device and word 'Thermos'.

24. There is then the argument that Trademark No. 22376 is not an independent Trademark but is associated with Trademark No. 17003 registered in the name of the Defendant. To this argument, the Plaintiff points out that Section 26 of the Act was repealed and so after the repeal, the inter-associations for each THERMOS mark became redundant and fell away.

25. The repealed Section 26 read as follows:-

“S26. (1) Trademarks that are registered as, or that are deemed by virtue of this Act to be, associated trademarks shall be assigned and transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trademarks.

(2) Where a trade mark that is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the trade marks shall be entered on the register as associated trademarks.

(3) Where a trade mark and any part or parts thereof are, by virtue of subsection (1) of section 24, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be and shall be registered as, associated trademarks.

(4) All trademarks that are, by virtue of subsection (2) of section 24, registered as a series in one registration shall be deemed to be, and shall be registered as, associated trademarks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trademarks registered as associated trademarks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception of confusions being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

(6) A decision of the Registrar under subsection (2) or (5) shall be subject to appeal to the court.”

26. Counsel Opiyo for the Plaintiff made a further contention that even under the repealed Section 26, associated marks were only to be deemed associated for purposes of assignment. For all other purposes they were deemed to be separate Trademarks. Counsel then suggested that the rationale for the repealed Section 26 was that associated marks had to be transferred or assigned together and to the same assignee to prevent a situation where different parties would be registered as owners of similar marks for the same goods or services thus causing confusion.

27. Counsel Olunga for the Defendant takes a divergent view. Counsel submits that Trademark No. 22376 does not stand alone but is associated with Trademark No. 17003 which had been registered far much earlier and which is the parent Trademark.

28. Regarding the effect of Section 26 of the Act, counsel asserts that the repeal of that provision which took place in 2002 cannot be cited as a reason to defeat the association of the two Trademarks which was created in 1976, at registration of Trademark No. 22376.

29. Counsel makes the point that because there were no transitional provisions in the Act as far as the repeal is concerned then section 23 of the Interpretation and General Provision Act will aid the Court in determining whether the repeal of the section affects things done prior to the repeal. Counsel argues that by dint of section 23(3) (b) and (c) it is clear that the repeal did not affect what was duly done under the repealed law.

30. As to the effect of Section 26, the Defendant takes the position that it is clear that for purposes of assignment and transmission, associated trademarks must be treated as a whole but for any other purpose they are deemed as separate marks.

31. There is, I think, consensus that when section 26 was repealed by Act 4 of 2002 no accompanying transitional provisions were made. Therefore, as correctly proposed by the Defendant, section 23 of the Interpretation and General Provision Act assists in determining whether anything done prior to the repeal survived the repeal. Section 23 reads:-

“Provisions respecting amended written law, and effect of repealing written law;

(1) Where in a written law a reference is made to another written law, that reference shall, except where the context otherwise requires, be deemed to include a reference to the last-mentioned written law as it may from time to time be amended.

(2) Where a written law repeals and re-enacts, with or without modification, a provision of a former written law, references in another written law to the provisions so repealed shall, unless a contrary intention appears, be construed as references to

the provision so re-enacted.

(3) Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of a written law so repealed or anything duly done or suffered under a written law so repealed; or

(c) affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed; or

(d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against a written law so repealed; or

(e) affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.”

32. It is common ground therefore that by dint of section 23(3) (b) and (c) of the Interpretation and General Provision Act the repeal of section 26 did not affect anything duly done or suffered to be done under those provisions nor did it affect a right, privilege, obligation or liability acquired, accrued or incurred under the repealed law. There is therefore little contention that if section 26 affected the association between Trademark No. 22376 and Trademark No. 17003 prior to the repeal then the same continues to hold to date, even after the repeal.

33. So as to understand the true effect of subsection (1) of the repealed law, it is necessary to set out the entire provision of the repealed Section 26:-

“S26. (1) Trademarks that are registered as, or that are deemed by virtue of this Act to be, associated trademarks shall be assigned and transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trademarks.

(2) Where a trade mark that is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the trade marks shall be entered on the register as associated trademarks.

(3) Where a trade mark and any part or parts thereof are, by virtue of subsection (1) of section 24, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be and shall be registered as, associated trademarks.

(4) All trademarks that are, by virtue of subsection (2) of section 24, registered as a series in one registration shall be deemed to be, and shall be registered as, associated trademarks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trademarks registered as associated trademarks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception of confusions being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

(6) A decision of the Registrar under subsection (2) or (5) shall be subject to appeal to the court.”

34. My understanding of the repealed subsection (1) is that, generally, associated Trademarks are deemed to be registered as separate Trademarks. However, where a proprietor desires to assign or transmit the associated Trademarks then they cannot be assigned or transmitted separately. They can only be assigned or transmitted as a whole. The associated Trademarks are joined at the hip for purposes of assignment and transmission.

35. That said if the proprietor wishes to assign or transmit any of the associated Trademarks separately then the proprietor would have to seek that the association be first dissolved in respect to the Trademark sought to be assigned or transmitted separately. Under Subsection 5 the Registrar may accede to the dissolution of the association if satisfied that there would be no likelihood of deception or confusion being caused if the Trademarks were used by another person in relation to any or the goods in respect of which it is registered. And as explained by **Kerly's Law of Trademarks and Trade Names Thirteenth Edition** there lies the entire object of the repealed law on associated Trademarks:-

“This requirement reflected the whole purpose of association, which was to avoid the same or similar marks being used on the same or similar goods by different people.”

36. Nothing in those provisions suggest that an associated Trademark, which is generally deemed to be a separate Trademark, should cease to exist when its associates (whether a parent mark) cease to exist. To the contrary, by contemplation of subsection 5, there will be instances

where associated Trademarks can exist as separate marks without causing likelihood of deception or confusion. Applied here, it may be that although Trademark no 22376 and Trademark No 17003 are associated, they can be used by two different people without the apprehension of deception or confusion.

37. The anxiety of Doshi is that as the owner of the Trademark No. 17003 which was found to be suitable for association with Trademark No. 22376, leaving the two Trademarks in the hands of two different proprietors may lead to confusion. Yet given my perception of the law the answer to that anxiety lies in the Defendant seeking, as it has done in the Counterclaim, for expungement or revocation of Trademark No. 22376. The answer is not to restore to self-help or extrajudicial action.

38. Now, do the two publications amount to an interference or infringement of the 1st Plaintiff's Trademarks? This discussion requires that the two publications be reproduced in their entirety. The publication of 23rd July 2020 reads as follows:-

“PUBLIC NOTICE

DOSHI IRONMONGERS LIMITED's attention has been drawn to a Public Notice put up by Kaplan & Stratton Advocates at page 6 of the Daily Nation newspaper of 22nd June 2020.

DOSHI IRONMONGERS LIMITED wishes to reiterate the contents of its newspaper advertisement published in the Daily Nation newspaper of 17th June 2020 at page 20, and to inform the public of the following facts:

DOSHI IRONMONGERS LIMITED is the sole registered proprietor of the Trade Mark Number 59464 “THERMOS” in Class 21 as depicted below:

[IMAGE]

Class: 21 (Plastic Flask Household Items).

The Certificate of Registration of the said Trade Mark “THERMOS” was issued to DOSHI IRONMONGERS LIMITED by the Registrar of Trade Marks on 15th May 2020. DOSHI IRONMONGERS LIMITED therefore has the exclusive license and right to use and deal with the said Trade Mark “THERMOS” in relation to the above named items in Kenya.

The allegation contained in the Notice by Kaplan & Stratton Advocates that Thermos Hong Kong Limited is the registered owner of Trade Mark NO 22376 THERMOS (word and device) for goods in Class 21 including flasks and insulated containers is not supported by facts, law and evidence because of the following reasons;

1. The registration of Trade Mark “THERMOS” is Class 21 in favour of Thermos Hong Kong Limited was quashed by the High Court in Mombasa in CIVIL APPEAL NO. 251 OF 2017 The Trade Mark is no longer registered in the name of Thermos Hong Kong Limited.

2. Pursuant to the order of the High Court in Mombasa the Registrar of Trade Marks proceeded to issue Certificate of Registration of Trade Mark “THERMOS” in Class 21 in the name of DOSHI IRONMONGERS LIMITED.

3. An attempt by Thermos Hong Kong Limited through Kaplan & Stratton Advocates to recall the Certificate of Registration issued DOSHI IRON MONGERS LIMITED was rejected by the Registrar of Trade Marks.

4. According to documents filed in court by Kaplan & Stratton Advocates Trade Mark No. 22376 which Thermos Hong Kong Limited purports to own IS NOT the word “THERMOS” but “SUN & SNOW FLAKE DEVICE” which in any event belonged to a different Company and has never been assigned to Thermos Hong Kong Limited.

The facts contained in this Notice are available for verification with the Registrar Trade Marks at the High Court of Kenya in Mombasa and with our advocates M/S OLUGA & COMPANY ADVOCATES. Any person attempting to publish and/or disseminate contrary and misleading information is hereby put on notice that we have instructed our advocates to take appropriate legal action.

In the meantime members of the public are notified that DOSHI IRONMONGERS LIMITED is the registered owner of Trade Mark Number 59464 “THERMOS” in Class 21 (Plastic Flask Household Items).

Any person engaged in the making, manufacturing, producing, importation, marketing, selling, exhibition, display and/or distribution of the above named goods under the said Trade Mark without express consent and/or authorization of DOSHI IRONMONGERS LIMITED or engaging in any other activity or action that may prejudice the rights and intellectual property of DOSHI IRONMONGERS LIMITED is doing so illegally and is liable for infringement of the trademark right of DOSHI IRONMONGERS LIMITED in the said “THERMOS” Trade Mark. The infringement of trade mark attracts both civil and criminal penalties under Kenyan and other applicable laws.

DOSHI IRONMONGERS LIMITED”

39. Although the Defendant asserts that the publication does not amount to an interference it is evident that it actually does. The publication

is not accurate in so far as it suggests that Trademark No. 22376 Thermos (word and device) belonging to 1st Plaintiff was quashed in the Civil Appeal No. 251 of 2017.

40. The same can be said of the publication of 17th June 2020 when it suggests that only Doshi has exclusive use of THERMOS trademarks. It which reads:-

“PUBLIC ALERT

Notice is hereby given that DOSHI IRONMONGERS LIMITED is the sole registered proprietor of the Trade Mark Number 59464 “THERMOS” in Class 21 as depicted below:

[IMAGE]

Class: 21 (Plastic Flask Household items)

DOSHI IRONMONGERS LIMITED has the exclusive authority and right to use and deal with the said Trade Mark “THERMOS” in relation to the above names items in Kenya.

Any person engaged in the making, manufacturing, producing, importation, marketing, selling, exhibition, display and/or distribution of the above names goods under the said Trade Mark without express consent and/or authorization of DOSHI IRONMONGERS LIMITED is doing so illegally and is liable for infringement of the trademark right of DOSHI IRONMONGERS LIMITED in the said “THERMOS” Trade Mark. The infringement of trade mark attracts both civil and criminal penalties under Kenyan and other applicable laws.

Members of the public are therefore advised to take note accordingly.

This notice is being given reserving all our rights in law and equity.

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SIGNED

DOSHI IRONMONGERS LIMITED”

41. The articles do more than reiterating that Doshi’s Trademarks did not touch on those of the 1st Plaintiff. In so far as the Plaintiffs’ Trademarks subsist and have not been expunged as sought by the Defendant in the Counterclaim, it must be fair that as proposed by the Defendant in paragraph 57 of its submissions that each side keeps to its own lane. The way to do so is to grant the orders of injunction sought by the Plaintiffs as the Defendant has shown an inclination to overstep its lane.

42. The Notice of Motion of 28th July 2020 is allowed as prayed. Costs to the Plaintiffs

Dated, Signed and Delivered in Court at Nairobi this 18th Day of January 2021

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Kahura for Opiyo for the Plaintiffs.

Oluga for the Defendant.