



M-Kopa Kenya Limited v Njenga t/a M-Kopo Kastomer Care & Accessories (Civil Suit E403 of 2023) [2025] KEHC 366 (KLR) (Commercial and Tax) (23 January 2025) (Judgment)

Neutral citation: [2025] KEHC 366 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E403 OF 2023
PM MULWA, J
JANUARY 23, 2025

BETWEEN

M-KOPA KENYA LIMITED PLAINTIFF

AND

JOHN WAWERU NJENGA T/A M-KOPO KASTOMER CARE & ACCESSORIES DEFENDANT

JUDGMENT

1. Through the plaint dated 29th August 2023, the plaintiff sought orders against the defendant for infringement of trademark and passing off. The defendant filed a memorandum of appearance dated 19th September 2023 through its advocate Ndengwa & Ndegwa, but failed to file a defence. As a result, the plaintiff's suit remains undefended.
2. The plaintiff's case is that it operates as an asset finance company, offering a variety of products, including smartphones, which are sold to customers on credit through a model known as "pay as you go". The plaintiff is the assignee of the trademark "M-Kopa" which was assigned to it by Mobile Venture Kenya Limited on 31st August 2015, as evidenced by the certificate of registration of assignment. The trademark was subsequently renewed on 18th May 2021.
3. The defendant, formerly an agent of the plaintiff, is alleged to have infringed upon the plaintiff's trademark and engaged in passing off activities using the trademark "M-KOPO" which bears a striking resemblance to the plaintiff's trademark "M-KOPA" in form, color, font and mark. This resemblance causes confusion among the plaintiff's clients. The defendant not only displays the deceptive mark but also misleads customers into believing that he is authorized to sell the plaintiff's smartphones.
4. The plaintiff avers that it has incurred significant financial and reputational damages due to the defendant's passing off of his products as being affiliated with the plaintiff's trademark. Despite being



served with a cease and desist letter, the defendant has failed, refused and neglected to cease and desist from passing off his products and smartphones as those of the plaintiff. This continued infringement has exacerbated the plaintiff's damages.

5. On the foregoing factual backdrop, the plaintiff sought reliefs as per the plaint being permanent and mandatory injunction, an order for accounts and forensic audit, general damages, plus interest and costs.
6. During the trial, the Plaintiff called two witnesses: Edgar Samba (Pw1), the Fraud Manager of the Plaintiff company, and Kageni Mbungu (PW2), the Head of Compliance Global with the Plaintiff. Both witnesses adopted their written testimonies. The witnesses testified along the lines set out in the pleading and produced documents in support of their arguments.

Analysis and determination

7. The Plaintiff claims to be the registered proprietor of the trademark No. 71323 "M-Kopa," which was first assigned to it by Mobile Venture Kenya Limited in the year 2012. This assignment was formalized through a certificate dated 31st August 2015, as evidenced by the certificate of registration of assignment. The trademark was subsequently renewed on 18th May 2021 for a period of 10 years, ensuring the Plaintiff's continued legal ownership and protection of the trademark.
8. As the proprietor of the "M-Kopa" trademark, the Plaintiff holds exclusive rights to enforce its trademark against any infringements and to commercially benefit from its use. This exclusive right allows the Plaintiff to protect the goodwill associated with the trademark and take legal action against any unauthorized use or passing off of the mark.
9. In *Pharmaceutical Manufacturing Company v Novelty Manufacturing Limited* (HCCC No. 746 of 1998), the court held:

“...Registration of a trademark confers the right to exclusive use of the mark. Infringement of the trademark is a tort of strict liability. Intention and motive are irrelevant considerations... The right is a statutory one...”
10. To successfully sue for trademark infringement, the Plaintiff must demonstrate that the Defendant used the registered trademark without permission in a way that is likely to cause confusion or deceive consumers regarding the source of goods or services.
11. In *Aktiebolaget Jonkoping Vulkan Industricksfa – Briksaktiebolag v East Africa Match Company Ltd* [1964] E.A. 62, the court opined:

“It is for the plaintiff company to prove that there is a resemblance between the two marks, and that such resemblance is deceptive. It is also a well-established principle of law that it is the duty of the judge to decide whether the trademark complained of does so nearly resemble the registered trademark as to be likely to deceive or cause confusion in the minds of the public. From that duty, the judge cannot abdicate.”
12. Having considered the names "M-Kopo Kastomer Care and Accessories" and "M-Kopa Kenya Limited," I note a striking similarity between them. In my view, the average consumer may not immediately discern the difference between the two and may, therefore, be led to believe that both represent the same product or service.
13. I have also reviewed the evidence presented by the Plaintiff, which includes the fact that the Defendant's business permit is issued to "M-Kopo Kastomer Care and Accessories". Additionally,



photographs exhibited show that the Defendant's premises prominently display the "M-Kopa Customer Care" advertisement. Based on this evidence, I find that the Defendant has infringed upon the Plaintiff's trademark by using the Plaintiff's logo in advertising its services without the Plaintiff's authorization.

14. Furthermore, the Defendant's use of a mark that is confusingly similar to the Plaintiff's registered "M-Kopa" trademark for advertising purposes amounts to an unauthorized adoption of the Plaintiff's trademark. These acts constitute trademark infringement, as it creates a likelihood of confusion among the Plaintiff's customers and undermines the Plaintiff's exclusive rights to its mark. It dilutes the distinctiveness of the Plaintiff's brand and misleads the public into believing that the Defendant's business is affiliated with or authorized by the Plaintiff, which is not the case.
15. There is no evidence to suggest that the Defendant is authorized to use the Plaintiff's trademark or that there is any partnership or affiliation between the two entities.
16. In addition to the injunctive reliefs, the Plaintiff seeks to be awarded damages for the passing off and infringement by the Defendant for the loss incurred. The plaintiff is expected to provide sufficient evidence to establish the extent of damages suffered.
17. In *British United Provident Association Limited vs Bupa Kenya Limited (2020)* eKLR the court stated that:

“A plaintiff bringing an action for infringement of intellectual property may choose to prove damages contemporaneously with liability. But it may, like here, first seek to establish infringement and once infringement has been determined to move to the next step of proving damages...As to the taking of account of profits of an infringer, the philosophy behind the remedy is that a party who has profited unlawfully from using or riding on another's intellectual property should not be allowed to keep the profits made from such venture. To permit that would be to allow for unjust enrichment.”

Disposition

18. In conclusion, I find that the Plaintiff, has proved its case against the Defendant on a balance of probabilities. I therefore enter judgement for the Plaintiff against the Defendant as follows:
 - a. A permanent injunction be and is hereby issued restraining the defendant, whether by himself, his servants, employees, representatives, and/or agents from using the words "M-KOPO" and/or any confusing or deceptive mark that is similar or substantially similar to the Plaintiff's trademark in selling, vending or distributing products through retail or wholesale.
 - b. A permanent injunction be and is hereby issued to restrain the Defendant, whether by himself, his servants, employees, representatives, and/or agents from passing off the Defendant's products/smartphones as those affiliated with the Plaintiff.
 - c. A mandatory injunction is issued against the defendant to remove, take down, destroy, demolish, and/or withdraw all advertisements bearing the trademark "M-KOPA" or "M-KOPO" and/or any confusing or deceptive mark that is directly or substantially similar to the Plaintiff's trademark "M-KOPA."
 - d. An order of enquiry is issued for accounts and forensic audit order to determine the profits earned by the Defendant's use of the infringed trademark and the Defendant to pay all sums found due upon the completion of such enquiry and account.



e. Costs of the suit.

Orders accordingly.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Jumah h/b for Mr. Odera for Plaintiff

N/A for Defendant

Court Assistant: Carlos

