



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 540 of 2009

ANANDA MARGA UNIVERSAL RELIEF TEAM (AMURT)... PLAINTIFF

VERSUS

AMURT (INTERNATIONAL).....DEFENDANT

R U L I N G

1. The Plaintiff seeks by **chamber summons dated 12th October 2009** the main order that pending hearing and disposal of the suit herein, the Defendant be restrained

“...from printing, publishing, advertising, issuing and/or causing to be issued, media and print advertisements, communicating through internet and/or e-mail and web page(s) of any matters concerning the (Plaintiff) and/or interfering in any manner whatsoever with the smooth running and management of ANANDA MARGA UNIVERSAL RELIEF TEAM (AMURT) and/or use the name AMURT and/or preventing the (Plaintiff) from using the name AMURT”.

2. The application was brought under **Order XXXIX, rules 1, 2, 2A, 3 and 9** of the old **Civil Procedure Rules** (the **Rules**). **Section 3A and 63(e)** of the **Civil Procedure Act** (the **Act**) are also cited.

The grounds for the application appearing on the face thereof are –

(i) That the Plaintiff is a non-governmental organization (NGO) registered in 1993 under the Non-Governmental Organizations (Co-ordination) Act.

(ii) That on 7th October 2009 the Defendant placed advertisements in the local dailies “defaming, disparaging and discrediting the (Plaintiff), and implying the (Plaintiff) is engaging in illegal activities.”

(iii) That the Plaintiff has various projects and relief works in various parts of the country and has suffered substantial loss and damage, and is likely to continue suffering prejudice as a consequence of the Defendant’s said action.

(iv) That the Defendant does not have any known projects and/or relief works in Kenya.

(v) That the Defendant is engaged in Sudan and other parts of the world, and its activities have no connection with the Plaintiff’s activities in Kenya at all.

(vi) That the Defendant is actuated by malice and bad faith.

(vii) That the Defendant’s said action is against public policy and is meant to undermine the Plaintiff’s standing both locally and internationally.

3. There is a supporting affidavit sworn by one JITENDRA KUMAR who has described himself as a director of the Plaintiff. He depones to the factual basis for the application. In particular he has deponed, *inter alia*, -

(i) That the Plaintiff applied for registration of its logo sometimes on 11th July 2003 and duly paid the requisite statutory fees.

(ii) That on 18th July 2009 the Plaintiff placed an advertisement in the local dailies highlighting the activities “carried out by AMURT in various parts of the country”.

(iii) That the Defendant through its advocates wrote letters dated 27th August 2009 to the Plaintiff demanding that the Plaintiff “stop using the name AMURT and alleged existence of foreign court orders”.

(iv) That on 5th October 2009 the Plaintiff instructed its advocates to respond “substantially” to the said letters.

(v) That on 7th October 2009, “with utter malice and without any just cause, the (Defendant) placed an advertisement in the local dailies, and in particular in the *Daily Nation* and *The Standard* newspapers, discrediting, defaming and disparaging” the Plaintiff.

(vi) That the Defendant “operates in the name and style of AMURT (INTERNATIONAL) which has nothing to do with the Plaintiff and in any case the Defendant does not have any known projects and/or relief works in Kenya other than in the Republic of Sudan”.

(vii) That the Plaintiff is “associated with its mother chapter which was founded in India in 1967 and has nothing to do with AMURT (INTERNATIONAL) founded in 1985 in Switzerland”.

4. The deponent has further deponed that on 5th October 2009 he perused records at the NGO’s offices and was “surprised to learn that the Respondent applied to dissolve AMURT (Switzerland) sometimes in the year 2006”; that such application having been lodged, the said logo does not exist in law at all as the same “goes with the contemplated dissolution”; that the Defendant is bent on “destabilizing stable organizations as it has been engaged in litigation in India, USA and Switzerland”; and that “the court decisions the (Defendant) has mentioned in its letters are unknown to the (Plaintiff) - in any case those are foreign judgments which have no bearing at all and are not binding on the (Plaintiff) without being first adopted by Kenyan courts”.

5. The Defendant opposed the application by **replying affidavit filed on 22nd October 2009**. It was sworn by one PRANAV KUMAR MANU who described himself as the Deputy Director of the Defendant.

6. The grounds of opposition emerging from the replying affidavit include –

(i) That the Plaintiff’s suit is incompetent in law as no reasonable cause of action is disclosed.

(ii) That the Defendant is an NGO registered in Kenya on 17th April 2003 and in Switzerland as an association.

(iii) That the Defendant is an “umbrella body of organizations established in Switzerland, Austria, Belgium, United States of America, Japan and Canada with its head office located in Vienna, Austria.

(iv) That the Defendant has branch offices in Italy, Netherlands, Kenya, South Sudan, Sri Lanka and Niger.

(v) That the Defendant was registered as an NGO in Kenya operating under the name AMURT (SWITZERLAND) “but later resolved to operate under its name as registered in Switzerland, AMURT

(INTERNATIONAL).

(vi) That after registering AMURT (INTERNATIONAL) as an NGO in Kenya the Defendant dissolved AMURT (SWITZERLAND) as an NGO in Kenya and replaced it and took over its assets and operations in Kenya.

(vii) That AMURT (SWITZERLAND) is the registered proprietor of the trademark “AMURT” which is recognized worldwide under the World Intellectual Property Organization.

(viii) That the Plaintiff attempted to register ARMUT as its trademark with the **Kenya Industrial Property Institute** while the trademark had already been registered by the Defendant’s member organization under the **Madrid Proposal** as Trademark Number 722211 valid until 24th September 2019.

(ix) That the Defendant undertakes donor-funded projects all over the world, including Kenya, and has in fact undertaken projects in Kenya.

(x) That for many years the Defendant has engaged the Plaintiff on the use of its trademark in its dealings and sought to work together with the Plaintiff by licensing it; but the Plaintiff, although showing a willingness to be licensed, has never made appropriate application to the Defendant for a license.

(xi) That the Plaintiff has been violating the Defendant’s trademark by referring to itself as AMURT to the detriment of the Defendant.

(xii) That a Swiss court in a ruling delivered on 1st April 2008 upheld AMURT as the Defendant’s trademark.

(xiii) That the Defendant was within its rights to publish the article complained of as it is the Plaintiff who is guilty of violating the Defendant’s intellectual property rights and causing members of the public, the Defendant’s partners and donors to associate and/or confuse the Defendant as being one and the same as the Plaintiff.

(xiv) That the Defendant’s work requires that the Defendant maintains a high level of integrity and trust; it cannot afford to be associated or confused with the Plaintiff whose integrity is unknown the Defendant.

(xv) That the publication of the article complained of was necessary to remove the public perception of an association between the Plaintiff and the Defendant.

7. There are many documents annexed to both the supporting and replying affidavits. I have perused them.

8. The application was canvassed by way of written submissions. I have duly considered them, together with the cases cited. I have also perused the plaint. The Defendant has not yet filed a statement of defence, but its defence is fully revealed in the replying affidavit.

9. The Plaintiff’s suit is essentially in defamation. Its case is that the Defendant’s advertisement complained of and published in local dailies discredited, defamed and/or disparaged the Plaintiff. It seeks appropriate permanent injunction and general damages.

10. But the material placed before the court in the supporting and replying affidavits disclose a deeper dispute over the trade mark **AMURT** which both parties claim. It is an intellectual property dispute which cannot be properly adjudicated upon the present interlocutory application. It is even doubtful if the dispute can be properly adjudicated upon in the present suit. A proper intellectual property suit probably ought to be filed in the appropriate division of this court.

11. Be that as it may, it is clear to me that the interlocutory order sought in the present application would be entirely inappropriate and can only fuel the intellectual property dispute between the parties rather than

serve the ends of justice. It must be refused.

12. In the circumstances I am not satisfied that the Plaintiff, by this suit as framed, has demonstrated a *prima facie* case with a probability of success. The chamber summons dated 12th October 2009 is hereby dismissed with costs. It is so ordered.

13. Delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have fully recovered my health.

DATED AT NAIROBI THIS 2ND DAY OF OCTOBER 2012

**H.P.G. WAWERU
JUDGE**

DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER 2012