THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0252 OF 2024
ARISING FROM CIVIL SUIT NO. 0174 OF 2024

NILE BREWERIES LIMITED :: APPLICANT

VERSUS

JOHNSON SEBUGGWAWO :: RESPONDENT

(Before: Hon. Justice Patricia Mutesi)

RULING

Brief facts

Briefly, the facts of this application are that, between 26th March 2012 and 4th April 2023, the Respondent was employed by the Applicant in various capacities. He started as a data specialist and rose to a distributor specialist, a draught supervisor, distributor manager and, finally, a trade marketing executive. Shortly after his resignation from the Applicant, the Respondent took up employment in a similar position in Uganda Breweries Limited, the Applicant's competitor. This prompted suspicion in the Applicant who carried out an investigation and found out that the Respondent had, between 9th January 2023 and 29th March 2023, sent 125 emails from his work email address to his personal email address, thereby copying / sharing the Applicant's confidential business information without any authorisation from the Applicant.

These actions prompted the Applicant to file Civil Suit No. 0174 of 2023 ("the main suit") in this Honourable Court against the Respondent for breach of his employment contract and for unauthorised disclosure of the Applicant's trade secrets. The main suit is still pending hearing and disposal. In the meantime, the Applicant has filed this application seeking an Anton Pillar Order permitting the search and inspection of the respondent's residence and the seizure of any and all computers, documents, materials or articles found therein relating to the applicant's trade secrets or business information.

Issue arising

Whether this application satisfies the conditions precedent to the issuance of an Anton Pillar Order.

Resolution of the issue

The Anton Pillar Order is one of the truest manifestations of the dynamic nature of the doctrines and maxims of equity in their bid to supply new solutions to emerging challenges in law. It takes the form of an interlocutory search and seizure order issued in an ex parte application where there is a reasonable fear that there is evidence of infringement of intellectual property rights in a person's possession which could be destroyed and lost if that person is alerted of the legal action instituted against him or her before the order is made. This equitable relief draws its name from the 8th December 1975 decision of the England and Wales Court of Appeal in **Anton Piller K.G. v Manufacturing Processes Ltd [1976] Ch. 55** which first recognised it. In the decades that have followed, the Anton Pillar Order has become one of the most powerful weapons in the fight against the infringement of IPRs across the Commonwealth.

In **Anton Piller K.G. v Manufacturing Processes (supra),** the England and Wales Court of Appeal dealt with a dispute in which the Appellant, Anton Piller K.G., a German manufacturer of fairly high repute, discovered that the Respondent, Manufacturing Processes Ltd, an English company, was in secret communication with 2 other German companies. The Respondent disclosed confidential information to those German companies and was further negotiating with Canadian and United States firms for business. The Appellant feared that the Respondent could collaborate with those German Companies and make a copy of the Appellant's product, thereby ruining the Appellant's market. This fear prompted the Appellant to seek an ex parte injunction stopping the Respondent from infringing on their copyright, using their confidential information or making copies of their product and an ex parte search and seizure order. The High Court issued the injunction but disallowed the request for a search and seizure order.

On appeal, Lord Denning, M.R., writing for the majority of the Court of Appeal, held that there was jurisdiction to make an ex parte order without prior notice to the Respondent in extreme cases since there was grave danger of property being smuggled away or vital evidence being destroyed. He stated that the order is at the extremity of the Court's powers and it would bind the Respondent in

personam to permit inspection. He, however, warned that the Court must act with circumspection in enforcing such an order.

Relying on **Anton Piller K.G. v Manufacturing Processes** *(supra),* this Court held in **Uganda Performing Rights Society V Mega Standard Supermarket, HCMA No. 1042 of 2015** and **Jubilee Industries Ltd v Balle Balle (U) Ltd, HCMA No. 855 of 2020**, that the 3 essential pre-conditions for the grant of an Anton Piller Order are that:

1. There must be an extremely strong prima facie case.
2. The damage, potential or actual, must be very serious to the plaintiff.
3. There must be clear evidence that the defendant has in its possession incriminating documents or things and that there is a real possibility that it may destroy such material before any application inter-parties can be made.

I reiterate, in agreement with the dictum of Lord Denning, M.R. referenced above, that the Court must act with circumspection in issuing and enforcing an Anton Piller Order. An Anton Piller Order is not a search warrant which entitles its holder to force his way into the Respondent's premises against the latter's will and consent. The Order only enjoins the Respondent to permit the entry, inspection and other direction of Court. The Applicant must, therefore, get the Respondent's permission to enter the premises. It remains open for the Respondent to refuse and, if he so wishes, to apply urgently for variation or discharge of the Order. However, should the Respondent refuse the Applicant entry and also choose not to apply for variation or discharge of the Order, such conduct will expose him or her to the risk of proceedings for contempt of Court. (See **Uganda Performing Rights Society V Mega Standard Supermarket, HCMA No. 1042 of 2015, Uganda Performing Rights Society v Fred Mukubira, HCMA No. 818 of 2003 and Linyi Huatai Battery Manufacturing Co. Ltd v Muse AF Enterprises Co. Ltd, HCMA No. 425 of 2020**.)

I am satisfied that the Applicant has an extremely strong prima facie case for the Respondent's breach of the confidentiality clauses in his employment contract and for his unauthorised disclosure of the Applicant's trade secrets and business information. This is revealed through the affidavit in support of the application sworn by Adu Anastacio Rando, the Applicant's managing director. Paragraph 6 of that affidavit shows that between 9th January 2023 and 29th March 2023, the Respondent secretly, and without any authorisation whatsoever, sent 125

emails from his work email address to his personal email address. 2 days later, on 31st March 2023, he handed in his resignation letter and left the job officially on 4th April 2023. Paragraph 4 of the affidavit shows that he, almost immediately thereafter, took up an employment position similar to the one he had in the Applicant with the Applicant's competitor, Uganda Breweries Ltd.

My conviction is also bolstered by the contents of the 125 emails. These were annexed to Mr. Rando's affidavit as Annexure JK. They contain a wide range of sensitive business information like marketing strategies and statistics, which, for obvious reasons, I cannot detail any further. It is unlikely that, in the 3 months leading up to his resignation from the Applicant, the Respondent, who was its Trade Marketing Executive, could innocently but without authorisation transfer the Applicant's sensitive business information from his work email address to his personal email address.

It is more likely that he did this because he wanted to access and use this information later after resigning from his job in the Applicant. Clause 1.8.3 of the Respondent's Terms and Conditions of Service (Annexure L) in the Applicant expressly enjoined him not to copy any information from the Applicant without authorisation. Based on the evidence of him sending the 125 emails to his personal email address, the I Respondent appears to have replicated the information therein without any authorisation.

Furthermore, I am convinced that there is very serious potential damage that could arise to the Applicant if an Anton Pillar Order is not granted. This observation flows from the above finding on a prima facie case owing to the sensitivity of the business information in the 125 emails. Since the Respondent is working with one of the Applicant's competitors, and has already demonstrated latent unscrupulousness by secretly securing the Applicant's sensitive and confidential business information in his personal email address shortly before he resigned, it is more probable than not that he will destroy any and all evidence of the 125 emails if he catches wind of these proceedings before the issuance of the Anton Piller Order. This will mean that he will be free to share that information with anyone and his tracks will be covered thereby evading accountability altogether.

Finally, I am satisfied that there must be clear evidence that the Respondent has in his possession incriminating documents and that there is a real possibility that he may destroy those documents before any application inter-parties can be made. Annexure JK expressly and unequivocally shows that the emails were

shared by the Respondent from his work email address to his personal email address. I have already made my observations about this latently unscrupulous conduct. I am, therefore, certain that the Applicant's fears are reasonable, valid and well-founded.

Therefore in the interest of securing justice in the main suit, this application must succeed. Consequently, I make the following orders:

i. An Anton Pillar Order doth issue directing the Respondent to, within 14 (fourteen) days from the date of this order, permit the Applicant, in the company of its advocates **ONLY**, to:
   (a) enter upon the Respondent's residence comprised in Kyadondo Block 114 Plot 654 situate at Masoli, Wakiso District, GPS (Global Positioning System) latitude and longitude coordinates 0.4225588, 32.5855247;
   (b) to inspect all computers, documents, materials or articles in that residence relating to the alleged infringement of the Applicant's trade secrets and/or business information; and
   (c) to seize and remove into the custody of this Honourable Court all computers, documents, materials or articles authored and relating to the Applicant's business documents and/or trade secrets which constitute or would constitute evidence in the trial of the main suit.

ii. The process in (i) above shall not be carried out for more than 12 (twelve) hours after the Applicant gains entry into the Respondent's residence.

iii. The Applicant shall transmit any and all seized items to the Registrar of the Court along with a formal return and inventory of the inspection and seizure process within 2 (two) days from the date on which the inspection and seizure process is completed.

iv. The Applicant shall within 7 (seven) days from the date of completion of the process in (i) above, file a formal inter-parties application in this Court for the confirmation of the seizure of the items collected during that process.

v. Costs of this application shall abide by the outcome of the main suit.

Patricia Mutesi

JUDGE

(18/03/2024)