

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT NO. 1065 OF 2022**

**GLORIA AKECH:PLAINTIFF**

**VERSUS**

**1. BROOKSIDE LIMITED**

**2. VINCENT OMOTH**

**3. ATII AND KATI LIMITED :DEFENDANT**

**Before the Hon. Lady Justice Patricia Kahigi Asimwe**

**Judgment**

Introduction

1. The Plaintiff brought this suit against the Defendants for copyright infringement.
2. The Plaintiff seeks the following reliefs from this court: a declaration that the Defendants' action of sharing the Plaintiff's concept in the document proposal and demonstration videos without the Plaintiff's permission is an infringement of her copyright; a declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant are unfairly benefitting from the use of the Plaintiff's demonstrative videos; an order for the audit of all proceeds received by the Defendants from use of her copyright; an order to account for the money received by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant from copyright infringement; a permanent injunction to issue restraining the Defendant from infringing the Plaintiff's copyright; an order for payment of compensation, exemplary damages, general damages and special damages; and payment of costs and interest.

### The Plaintiff's case

3. The Plaintiff approached the 1<sup>st</sup> Defendant in December 2021, with an idea to run a campaign aimed at marketing the 1<sup>st</sup> Defendant's product of Fresh Dairy's extended shelf life.
4. The marketing concept was that the 1<sup>st</sup> Defendant would sell its milk products by gathering women in Uganda to discuss different topics. During the discussions, the women would enjoy taking milk as a means of publicizing the milk brand.
5. The marketing concept was submitted in the form of demonstration videos and a document proposal to the 2<sup>nd</sup> Defendant, who is the marketing manager of the 1<sup>st</sup> Defendant.
6. The documented proposal included an introduction about the Plaintiff, a vision of the campaign, the goal of the campaign, a detailed plan of the campaign, and the monthly budget of the campaign totaling UGX. 7,500,000.
7. The 2<sup>nd</sup> Defendant liked the concept demonstrated in the video and assigned her to work with the 1<sup>st</sup> Defendant's Events and marketing coordinator, Ms. Monica Kulabako Ineza who was in charge of handling the financing of the campaign.
8. The 2<sup>nd</sup> Defendant instructed the Plaintiff and its events marketing coordinator to look for venues, snack suppliers, and women to whom the brand will be marketed. The 2<sup>nd</sup> Defendant asked for a budget which she submitted in an email dated 1<sup>st</sup> June 2022. The Plaintiff claims that after submitting the budget, the 2<sup>nd</sup> Defendant became evasive.
9. The Plaintiff was surprised to discover that the 2<sup>nd</sup> Defendant had conspired with the 3<sup>rd</sup> Defendant to bring on board another life



coach, Bahati Hilda Sabiti, to run the fresh dairy campaign using the Plaintiff's idea or concept shared in the Plaintiff's demonstration videos.

10. The Plaintiff stated that she never consented to Bahati Hilda Sabiti's use of her demonstration videos and documented proposals. She concluded that the Defendants illegally shared her demonstration videos and documented proposals.

#### The Defendant's case

11. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant stated that the Plaintiff's proposal and budget did not align with the 1<sup>st</sup> Defendant's marketing strategy, target audience, and budget and the Plaintiff was informed about it.
12. The Plaintiff did not have a signed agreement with the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant denied naming her as its brand ambassador. It stated that there is a clear process flow for approval of a supplier, which commences with the issue of a Local Purchase order. The Plaintiff was never issued with an LPO; thus she was never contracted as a brand ambassador.
13. The 2<sup>nd</sup> Defendant contends that the Plaintiff adopted the material aspects for her proposal from the 2<sup>nd</sup> Defendant; therefore, she cannot claim novelty and originality regarding the proposal and demonstration videos presented to the Defendant.

#### Representation

14. The Plaintiff was represented by Citadel Advocates, and the Defendant was represented by Counsel M/s Ntwali & Co. Advocates. Both parties filed written submissions.

### Issues

15. The issues for resolution are as follows:

- I. Whether the Plaintiff discloses a cause of action
- II. Whether the Defendant infringed on the Plaintiff's copyright
- III. What remedies are available to the Plaintiff?

### Evidence

16. The Plaintiff presented two witnesses, PW1-Gloria Akech, and PW2-Monica Kulabako Ineza, the former events and marketing Coordinator of the 1<sup>st</sup> Defendant.

17. The Defendants presented two witnesses, DW1-Vincent Omoth, the 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Defendant's marketing manager, and DW 2 -Joan Kataike, the Managing Director of the 3<sup>rd</sup> Defendant.

### The Plaintiff's submissions

18. Counsel for the Plaintiff submitted that the plaintiff has a legitimate cause of action as the author of the demonstrated video and document proposal which she submitted to the Defendant. He explained that her right had been infringed by sharing her documented proposal and demonstration video with the 3<sup>rd</sup> Defendant without her consent.

19. Counsel for the Plaintiff submitted that the Plaintiff has a copyright in the works presented in the material form of a demonstration video and documented proposal. He explained that the Plaintiff is the author of the demonstration video and documented proposal since the works result from her independent efforts.



20. Counsel for the Plaintiff submitted that the demonstration video and proposal pass the originality test. He explained that the originality of the work is not based on the fact that the work is entirely new or has never been used before. It is based on whether the same plan, arrangement, and combination of materials have been used before for the same purpose or for any other purpose. If they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints from existing and known source. He referred to the case of *Stella Atal versus Ann Abels Kirata* (High Court Civil Suit No. 967 of 2004 to support his argument.
21. Counsel for the Plaintiff submitted that the 1<sup>st</sup> Defendant infringed the Plaintiff's copyright by sharing it with third parties without the Plaintiff's authorisation. He referred to Section 46 of the Copyright and Neighboring Rights Act of 2006.
22. Counsel further submitted that the Defendant violated the Plaintiff's economic rights by distributing the Plaintiff's work to the 3<sup>rd</sup> Defendant who used it to prepare a campaign for the 1<sup>st</sup> Defendant without the Plaintiff's consent.

#### The Defendant's submission

23. Counsel for the Defendant submitted that Section 5 of the Copyright and Neighboring Rights Act of 2006 protects only original work that has been reduced into material form. Counsel for the Defendant submitted that PW2 confirmed to this court that PW 1 and DW1 had several conversations where they brainstormed the idea/concept and that DW1 asked PW1 to share a detailed proposal. Counsel of the Defendant concluded that the Plaintiff's idea was not original since it was presented in a raw form to the 2<sup>nd</sup> Defendant who helped her fine-tune the concept to align with the 1<sup>st</sup> Defendant's marketing strategy.

24. Counsel for the Defendant submitted that case law states that proposals do not enjoy protection under copyright. He referred to *Byte Legion Technologies versus MTN(UGANDA) Limited Civil Suit No. 395 of 2009*.

### Resolution

#### *Issue I: Whether the Plaintiff discloses a cause of action*

25. Counsel for the Defendant argued that the Plaintiff does not disclose a cause of action because the Plaintiff was seeking protection of an idea/concept which was not formally accepted by the 1<sup>st</sup> & 2<sup>nd</sup> Defendant. He further submitted that the absence of a contract makes the Plaintiff's claims of no basis. He prayed that the court strike out the plaintiff
26. In the case of **Motor Garage and others Vs. Motorkov East Africa Law Reports 1971 E. A pg. 514**, the court held that for a cause of action to be disclosed, the plaintiff must show that the Plaintiff has a right, which right has been violated and the defendant is liable.
27. In cases of copyright, to succeed in a copyright infringement claim, the plaintiff must prove that: copyright subsists in the work in issue; the plaintiff has standing to bring the claim; and the defendant committed an infringing act. (See **Lomic V. Paul, Intellectual Property Litigation Forms and Precedents, 2016**, LexisNexis at page 120).
28. Cause of action has been defined as every fact that is material to be proved to enable the Plaintiff to succeed or every fact which, if denied, the Plaintiff must prove in order to obtain judgment. (See **Read Vs. Brown 22, QBD pg. 31**. cited in **Tororo Cement Co. Ltd Vs. Frokina International Ltd Civil Appeal No.2 of 2001**).



29. The Supreme Court of Uganda in the case of **Narottam Bhatia and Hemantini Bhatia Vs Boutique Shazim Limited SSCA No. 16 of 2009** held that, in determining whether a plaint discloses a cause of action, the court must look at the Plaint and annexures thereto with an assumption that all the facts as pleaded are true.
30. According to the Plaint, the Plaintiff approached the 2<sup>nd</sup> Defendant with an idea to market the 1<sup>st</sup> Defendant's milk. She proposed the idea to the 2<sup>nd</sup> Defendant. The Plaintiff then submitted the idea in the form of demonstration videos and a documented proposal. The 2<sup>nd</sup> defendant asked her to submit a budget for the implementation of the proposal which she submitted. Her proposal was submitted to the 3<sup>rd</sup> defendant. She later learned that Hilda Bahati was also requested to submit and budget which was approved. Hilda Sabiti then ran a campaign using the Plaintiff's demonstration video and the documented proposal.
31. From the pleadings the works in question were not only an idea as they were reduced into material form protectable as such under Copyright law. Secondly, the Plaintiff alleges that her works were used by Hilda Sabiti to promote the 1<sup>st</sup> Defendant's milk. These facts raise a cause of action. The preliminary objection is therefore dismissed.

*Issue 2: Whether the Defendant infringed on the Plaintiff's copyright*

32. According to **Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 9(2) Page 10 para 3**, copyright is defined as "the exclusive right to do, and to authorize others to do certain acts in relation to literary, dramatic and musical works, in relation to sound recordings, films, broadcasts, cable programs and published editions of works.

33. In the United Kingdom case of **Sawkins versus Hyperion Records Ltd [2005] 3 ALLER 636**, the Court set the ingredients that need to be looked at in a copyright action, that is:

- a) Whether the work is one in which copyright subsists under the law;
  - b) Who is the author and owner of the relevant copyright; and
  - c) Whether the work has been substantially copied without the consent of the owner.
- a) *Whether the work is one in which copyright subsists under the law*
34. *Sections 4 and 5 of the Copyright and Neighboring Rights Act*, set out the ingredients to look out for to ascertain if a work is eligible for protection.
35. Under section 4 of the *Copyright and Neighboring Rights Act* an author of any work shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created.
36. Under the above provision, the questions to consider in order to determine whether copyright subsists under the law are whether the works are original and whether the works were reduced into material form.
37. Counsel for the Defendant has argued that the Plaintiff presented an idea and a concept to the Defendant. He submitted that at the initial presentation of the idea and concept, they were not reduced to material form and hence do not enjoy protection under the Copyright and Neighboring Rights Act.



Counsel cited Section 6 of the Copyright and Neighboring Rights Act which excludes the protection of Ideas, concepts, procedures, methods, or other things of a similar nature.

38. Counsel for the Defendants cited the case of **Byte Legion Technologies Vs MTN (Uganda) Ltd CS 359 of 2009** where the court held that the Plaintiff cannot seek to protect an idea. However, the **Byte Legion Technologies** case is distinguishable from the present case because in that case, the Plaintiff did not provide any source code to prove that their product had been reduced into material form.
39. Under *Section 4 (1) of the Copyright and Neighboring Rights Act, 2006*, the author of any shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of the quality of the work or the purpose for which it is created. *Section 4 (2)* the protection of the author's work shall not be subject to any formality.
40. In the present case, the Plaintiff's work was reduced into material form. It was in the form of a written proposal and demonstration video, which were handed over to the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant did not deny receiving a document proposal and demonstration video on a flash disk. The demonstration video and document proposal were tendered in as exhibits PE1 and PE 7A.
41. *Section 5 (1) of the Copyright and Neighboring Rights Act* provides that literary, scientific, and artistic works are eligible for copyright. These include articles, books, pamphlets, lectures, addresses, sermons, and other works of a similar nature. Literary work is defined as nonaudiovisual work that is expressed in verbal, numerical, or other symbols, such as words

or musical notation, and embodied in some type of physical object. .

42. The Plaintiff submitted a documented proposal (PE1) to the 2<sup>nd</sup> Defendant. Under the proposal, she shares information about herself, the vision and mission of the campaign, the long-term goal, the plan for implementation of the campaign, some photos of groups of women with cups and flasks, and some snacks. This proposal in my opinion amounts to literary works under section 5 (1) (a) of the *Copyright and Neighboring Rights Act and therefore eligible for copyright protection*.
43. Under *Section 5 (1) (c) of the Copyright and Neighboring Rights Act, works eligible for copyright include* audio-visual works and sound recordings, including cinematographic works and other works of a similar nature.
44. The demonstration video falls under Section 5 (1) (c) of the Copyright and Neighboring Rights Act and is therefore subject to copyright protection.
45. I find that the Plaintiff's works were reduced in material form. The next question then is to ascertain whether the works are original.
46. DW1 in his testimony stated that the Plaintiff approached him with the intention to create a working relationship with the 1<sup>st</sup> Defendant. The two had discussions in regard to the 1<sup>st</sup> Defendant's marketing strategy. The Plaintiff then offered to come up with a marketing idea that would showcase the 1<sup>st</sup> Defendant's product to a targeted group of women. DW 1 further testified that the original concept did not have necessary elements such as tea drinking and milk discussion. He informed the Plaintiff about the missing aspects and the



Plaintiff adopted his proposals therefore her concept cannot be construed as original.

47. Section 4(1) & (2) of the Copyright and Neighboring Rights Act, provides for the protection of original works that are reduced to material form. Under section 4(3), a work is original if it is the product of the independent efforts of the author.
48. The Defendant's argument is premised on the fact that the Plaintiff's work was not original. The Supreme Court of the United States, in the case of **Feist Publication Inc. versus. Rural Telephone Service 499 U.S. 340 (1991)**, stated that the sine qua non of copyright is originality. The Supreme Court further held that:

*Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. ... To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, "no matter how crude, humble or obvious" it might be.*

49. The test of originality was discussed in the case of **Stella Atal versus Ann Abels Kirata (High Court Civil Suit No. 967 of 2004)**. Justice Kiryabwire cited the case of **Emerson v Davies (1845) 3 Story 768** where it was held that the test of originality is based on whether the same plan, arrangement, and combination of materials have been used before for the same purpose or for any other purpose. If they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints from existing and known sources.

50. The Plaintiff's proposal was to promote the Defendant's milk to women through meetings at which different topics would be discussed. During cross-examination, DW1, confirmed to the court that no one had ever shared with him a similar proposal. From the evidence presented in this court, I find that the Plaintiff demonstrated creativity when she came up with the documented video. Seeing that the Plaintiff did not copy this video from other works, this court finds the demonstration video amounts to original works in the under the Copyright and Neighboring Rights Act.
51. Counsel for the Defendant argued that the documented proposal is not original because the Plaintiff used one photo that belonged to the 1<sup>st</sup> Defendant on page 7 of the proposal. This Court finds that the documentation doesn't fall short of being original because the Plaintiff used one photo of the 1<sup>st</sup> Defendant. In **Stella Atal versus Ann Abels Kirata (High Court Civil Suit No. 967 of 2004) [2009]**. Justice Kiryabwire held that it is possible to create personal copyright from preexisting materials, provided what is created is different from what was in use before. The originality test does not bar one from using any existing content, as long as that content is combined, is planned, and arranged in a non-mechanical manner.
52. The documented proposal comprises of twelve pages. The Plaintiff describes herself and her work, shares some of her past work in pictorial form, adds sample pictures and tag lines of how she can advertise the 1<sup>st</sup> Defendant's milk, adds coloured photos of how the engagements with the target audience will look and feedback from the demonstration tea party. All the arrangement of the content demonstrates a level of creativity that makes it original.



53. I find that the demonstrated video and documented proposal pass the originality test for copyright protection.

b) *Who is the author and owner of the relevant copyright?*

54. As discussed above, the Defendants' argument is that the 2<sup>nd</sup> Defendant made a contribution to the original proposal and thus the Plaintiff cannot claim copyright protection for the Plaintiff's works. However, as found above, the proposal was reduced in material form, is original, and therefore subject to protection under the Copyright and Neighboring Rights Act. It is not in dispute that the Plaintiff submitted a proposal to the 2<sup>nd</sup> Defendant for the promotion of the 1<sup>st</sup> Defendant's milk. In the absence of evidence to the contrary, I find that the Plaintiff is the author of the works in issue.

c) *Whether the work has been substantially copied without the consent of the owner*

55. Under section 46 (1) of the Copyright and Neighbouring Rights Act it has provided as follows:

*Infringement of copyright or neighbouring right occurs where, without a valid transfer, licence, assignment, or other authorisation a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to—*

*(a) reproduce, fix, duplicate, extract, imitate, or import into Uganda otherwise than for his or her own private use;*

56. Prof. Bakibinga D and Dr. Kakungulu M, in **Property Law in East Africa**, 2016, Law Africa, page 47, state that to ascertain infringement of copyright, the issues to address are whether

there has been a copying and whether the copying constitutes a substantial taking of the Plaintiff's work.

57. Under the substantiality test, for one to prove infringement, the Plaintiff has to prove that either the whole or a substantial part of the works in issue was copied by the Defendant. (see **Copyright Law – Principles, Practice & Procedure, 2<sup>nd</sup> Edition by Bankole Sodipo at page 172**).
58. In the English case of **Francis Day and Hunter, Limited and Twentieth Century Fox Corporation Limited & others** [1963] Ch.587 at p.623, cited in *Copyright Law – Principles, Practice & Procedure, 2<sup>nd</sup> Edition by Bankole Sodipo* it was held as follows:
- ... It is well established that to constitute an infringement of copyright in any literary, dramatic, or musical work, there must be present two elements. Firstly, there must be sufficient objective similarity between the infringing work and the copyright work or a substantial part thereof, for the former to be properly described, not necessarily as identical with but as a reproduction or adaptation of the latter. Secondly, the copyright work must be the source from which the infringing work is derived.
59. Section 45(5) of Uganda's Copyright and Neighboring Rights Act, recognizes the substantial copying test. It provides that "Infringement is not actionable unless the infringement involves the whole piece of work or a substantial part of the work."
60. In Uganda the substantial similarity test was explained in the case of **Zeenode Limited versus The Attorney General and 2 Others, Miscellaneous Application No.0347 of 2021 Mubiru J**, held that "The general test for copyright infringement is whether the accused work is so similar to the applicant's work



that an ordinary reasonable person would conclude that the respondent unlawfully appropriated the applicant's protectable expression by taking out of it, material substance and value." The learned judge further explained that two works would be regarded as substantially similar if the ordinary observer unless he or she set out to detect the disparities, would be disposed to overlook them and regard their aesthetic appeal as the same.

61. According to **Dr. Chris Adomaka-Kwakye et al in Intellectual Copyright Law in Ghana, 2023, Intelligent Quotient Media, at page 65** "It is not always easy evidence [that a defendant's work is derived from claimants]. A claimant would typically rely on similarities between the works coupled with evidence that the defendant had access and opportunity to copy the copyrighted work."
62. The Plaintiff's concept was to market milk to a specific target group in this case women by holding meetings to discuss different topics. In the WhatsApp messages between the 2<sup>nd</sup> defendant and the Plaintiff, the defendant noted that the concept met the criteria with respect to the target group and conversation. What was missing was the concept of tea drinking and milk discussion. Therefore, the works of the Plaintiff had two major concepts, that is the target group and the element of conversation.
63. **Section 46 of the Copyright and Neighboring Rights Act of 2006** provides that copyright infringement occurs where, without authorization, a person deals with any work or performance contrary to the permitted free use by distributing in Uganda by way of sale, exhibiting to the public for commercial purposes by way of broadcast, public performance or otherwise. Infringement also happens when the work is used

in a manner that is prejudicial to the honor and reputation of the author.

64. Counsel for the Plaintiff submitted on two instances of infringement. The first instance is that the 1<sup>st</sup> & 2<sup>nd</sup> Defendant infringed the Plaintiff's copyright when they shared it with the 3<sup>rd</sup> Defendant without the Plaintiff's consent. He further submitted that the 3<sup>rd</sup> Defendant admitted to having received the Plaintiff's demonstration video and documented proposal from the 1<sup>st</sup> & 2<sup>nd</sup> Defendant.
65. I agree with counsel for the Plaintiff that the 1<sup>st</sup> & 2<sup>nd</sup> Defendant infringed the copyright of the Plaintiff when they shared her video and document proposal with the 3<sup>rd</sup> Defendant without her consent.
66. The other infringement incident is one in which the Plaintiff argues that the 3<sup>rd</sup> Defendant permitted Bahati Hilda Sabiti to reproduce/ imitate the Plaintiff's work, hence infringing the Plaintiff's protected works.
67. In the case of **Designer Guild V Russel Williams [2000] 1 WLR 2416** page 2422 it was held that "substantiality depends upon quality rather than quantity." Lord Hoffmann further held that the part which is substantial can be a feature or combination of features of the work, abstracted from it rather than forming a discrete part."
68. It is not in dispute that the Plaintiff approached the 2<sup>nd</sup> Defendant with a proposal on how to market the 1<sup>st</sup> Defendant's milk. At the heart of the Plaintiff's copyrighted works lay two important concepts. The first was to market the milk to women. The second was to market the milk through meetings held with women at which meetings there would be discussions of



different topics. In my view while the defendant added two other concepts, this did not result in a significantly different piece of work.

69. In her proposal, the Plaintiff's target is 20 to 25 women. The defendants submitted in evidence a profile of Hilda Sabiti. In the profile, under the package, she offers weekly transformational meetings with 20 women and monthly events with 300 women. The plaintiff's topics for discussion include health issues and financial and business matters. On the other hand under Hilda Sabiti's campaign which was submitted as PE 6, the topics covered include financial growth, health and nutrition etc. Therefore, it also covers conversation. I find that the two works are substantially similar. It should be noted that Hilda Bahati's profile and campaign make no reference to tea drinking and neither do the photos show any evidence of tea drinking.
70. In this case, it is not in dispute that the 2<sup>nd</sup> Defendant passed on the Plaintiff's works to the 3<sup>rd</sup> Defendant. Both the 2<sup>nd</sup> defendant and the witness for the 3<sup>rd</sup> Defendant stated so in their testimony. DW 1 testified that prior to receiving the Plaintiff's works, he had not previously received a similar proposal. Therefore, the Plaintiff's works were the first proposal that they received. In addition, DW 2 admitted that she received the Plaintiff's proposal and Hilda Bahati's proposal. It is plausible that the proposal having been submitted to the 3<sup>rd</sup> Defendant could have gotten into the hands of Hilda Bahati. It is also possible that the 2<sup>nd</sup> Defendant passed on the Plaintiff's proposal to Hilda Bahati. Given the fact that there is substantial similarity in the two proposals, I find that the Hilda Bahati had access to the Plaintiffs works.

71. In conclusion, therefore the Defendant infringed on the Plaintiffs copyright. This issue is answered in the affirmative.

*Issue 3: What remedies are available to the Plaintiff?*

*General damages*

72. Section 45(4) of the CRNA Act provides that a person who sustains any damage because of the infringement of their rights may claim damages against the person responsible for the infringement, whether or not that person has been successfully prosecuted.

73. Counsel for the Plaintiff submitted that the Plaintiff is rightly entitled to general damages since she expended time and money to gather women, a venue, and to shoot the demonstration videos. He referred to the case of **Katatumba Vs Anti-Corruption Coalition Uganda Civil Suit No. 307 of 2011** in which it was held that one method of protecting copyright is to discourage people from infringing copyright owners' rights with impunity. This may be done by an award of damages based on the common law principle of restitutio in integrum.

74. In **Chabot versus Davies & Another [1936] 3 ALLER [1936] 3 ALLER Pg 221**, the measure of quantifying damages in cases of copyright infringement depends on the facts of each case. It was stated that a trial judge can consider the amount the plaintiff would fairly have received for her works.

75. I have considered the facts of this case and the circumstances and I find damages of UGX. 50,000,000 appropriate.

*Exemplary damages*



76. Counsel for the Plaintiff submitted that the Defendants knowingly took advantage of the Plaintiff's good faith to take for the 1<sup>st</sup> Defendant's benefit, the fruit of the Plaintiff's effort and ingenuity and used her proposal without compensating her. Counsel for Plaintiff submitted that it is reprehensible behaviour on Defendants, part for which exemplary damages are awardable.
77. According to the **Black's Law Dictionary, 8<sup>th</sup> Edition** on page 1177 punitive damages are "awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; damages assessed by way of penalizing the wrongdoer or making an example to others. Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract."
78. In the case of **Uganda Revenue Authority Vs Wanume David Kitamirike Civil Appeal No. 43 of 2010**, the court held as follows:
- Punitive or exemplary damages are an exception to the rule, that damages generally are to compensate the injured person. These are awardable to punish, deter, and express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive, and/or malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. Unlike general and aggravated damages, punitive damages focus on the defendant's misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society's and also the court's sense of decency. They may also be awarded to prevent unjust enrichment. They are awardable with restraint and in exceptional cases,*

because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract. (Emphasis added)

79. In view of the above authorities, I find that exemplary/punitive damages do not apply in this case.

*Special damages*

80. The general rule is that special damages must be specifically pleaded and strictly proved. **(See Jivanji versus Sanyo Co. Ltd [2003] EA 98)**. Counsel for the plaintiff did adduce evidence to prove special damages that had been prayed for. I decline to award specific damages.

*An order of audit of all the proceeds received by the defendants jointly and severally from the use of the Plaintiff's copyright.*

81. The Plaintiff's claim is for a remedy of an order for an account of the defendant's profits arising from the infringement of the Plaintiff's copyright. This remedy is sought as an alternative to a remedy for damages. (see **Alpin T & Davis J, 2013 Intellectual Property Law, Text, Cases and Materials (2<sup>nd</sup> Edition), Oxford University Press, at page 867.**) Having granted damages I decline to grant this remedy.
82. In conclusion, judgment is entered in favour of the Plaintiff against the defendants jointly and severally for;
- a) UGX. 50,000,000 for general damages and interest there on 15% p.a. from the filing date until payment in full.
  - b) A permanent injunction restraining the Defendants or her agents or servants from sharing the Plaintiff's



demonstration videos and documented proposal without the Plaintiff's consent.

c) The costs of the suit.

Dated this 22<sup>nd</sup> day of April 2024.



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**Patricia Kahigi Asiimwe**

**Judge**

**Delivered on ECCMIS**

