

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**(CIVIL DIVISION)**

**CIVIL SUIT NO. 97 & 290 OF 2015**

**PENTECOSTAL ASSEMBLIES OF GOD LIMITED-----PLAINTIFF**

**VERSUS**

**1. PENTECOSTAL ASSEMBLIES OF GOD LIRA LIMITED**

**2. UGANDA REGISTRATION SERVICES BUREAU-----DEFENDANT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The facts of the plaintiff's case are that on 06<sup>th</sup> January 1999 the Plaintiff was duly incorporated as a company limited by guarantee with the major objective of propagating the gospel of Jesus Christ and establish, develop and run local Churches throughout Uganda.

To further protect its interest, the Plaintiff registered a trademark in Part B of the Trademark Register in respect of the name "**Pentecostal Assemblies of God**".

On the 17<sup>th</sup> day of February 2014, the 1<sup>st</sup> Defendant incorporated a company in the name of "**Pentecostal Assemblies of God Lira Limited.**" One of the directors in the 1<sup>st</sup> Defendant is Mr. Mukalu Joel, formerly employed by the Plaintiff as the District Superintendent(Bishop) of Lira Diocese from 2006-2013 when the plaintiff excommunicated him on grounds of questionable character.

The sole aim of incorporating the 1<sup>st</sup> Defendant was an attempt by its members and directors to confuse and disorganise the Christian Congregation in Lira District and the General Public and this the 1<sup>st</sup> Defendant achieved by confusing the Christians in Lira and taking over the places of worship and the properties of the Plaintiff.

On the 03<sup>rd</sup> day of August 2015, the Plaintiff, through its Counsel, wrote to the 2<sup>nd</sup> Defendant and requested that it deregisters the 1<sup>st</sup> Defendant on grounds that the 1<sup>st</sup> Defendant had incorporated a company bearing similar names to that of the Plaintiff and this was likely to cause confusion to the public.

The 2<sup>nd</sup> Defendant ignored the Plaintiffs' correspondence and to date, the 1<sup>st</sup> Defendant is still in use of the name and the confusion among the public and especially among the Christians in Lira has escalated.

Efforts by the Plaintiff to resolve this impasse amicably failed so the Plaintiff instituted Civil Suits against the defendants jointly and or severally for the unlawful and tortious use of its company name to cause confusion to the public and for the unlawful and tortious infringement of the plaintiff's trademark in a manner calculated to cause injury to the business and reputation of the Plaintiff.

The 1<sup>st</sup> Defendant filed a Counterclaim against the Plaintiff and 2<sup>nd</sup> Defendant respectively seeking for: An order directing the Registrar General of the 2<sup>nd</sup> Defendant to revoke the trademark of the Plaintiff on grounds that it was acquired by fraud, a declaration that its incorporation was lawful, a declaration that the 2<sup>nd</sup> Defendant does not have legal authority to direct it to change its name and or strike it off the register of Companies, a declaration that its activities are not misleading and a permanent injunction against the 2<sup>nd</sup> Defendant restraining it from deregistering it.

### **AGREED ISSUES.**

At the hearing, the following issues were agreed upon:

- (a) Whether the registration of the 1<sup>st</sup> Defendant with a name similar to that of the Plaintiff was lawful?
- (b) Whether the registration of the Plaintiff's trademark "Pentecostal Assemblies of God" by the 2<sup>nd</sup> Defendant was lawful?
- (c) Who is the lawful owner of the land & properties claimed by the Parties in Lira?
- (d) What are the remedies available to the Parties?

At the trial parties were directed to file witness statements which they all filed. The matter proceeded on 14<sup>th</sup> February 2019 with the admission of the documents/exhibits and the plaintiff presenting his only witness testimony. After the admission of his witness statement as his evidence in chief, the 1<sup>st</sup> defendant's counsel was unable to cross examine him.

The defendant's counsel sought an adjournment in order to prepare and cross examine the witness. The Court granted the adjournment for further hearing on 15<sup>th</sup> March 2019 at 10:30-4:00pm for hearing with an order that all witnesses must attend court on that day.

But on the day fixed in presence of all the parties and their counsel both present in court the 1<sup>st</sup> defendant's counsel and his witnesses did not appear in court. The matter proceeded ex parte against the 1<sup>st</sup> defendant. The plaintiff closed its case with their only witness and the 2<sup>nd</sup> defendant opened its case and presented its only witness and accordingly closed its case.

The court then proceeded to close the hearing under Order 17 rule 4 and allowed the parties to file submissions and set a judgment date. Before the court could deliver the judgment the 1<sup>st</sup> defendant made an application to set aside the Order made under Order 17 rule 4 which the court dismissed.

## **Issue 1**

### ***Whether the registration of the 1<sup>st</sup> Defendant with a name similar to that of the Plaintiff was lawful?***

The plaintiff's counsel submitted that it was not contested by either of the Defendants that the Plaintiff was incorporated as a company limited by guarantee on 06<sup>th</sup> January 1999 as "**Pentecostal Assemblies of God**". The certificate of incorporation marked as Exhibit "**P1**" to the trial bundle was not disputed. It was further not in dispute that much later on 17<sup>th</sup> February 2014, the 1<sup>st</sup> Defendant was incorporated as a company limited by guarantee under the name "**Pentecostal Assemblies of God Lira Limited.**" The Certificate of incorporation was attached to the trial bundle and marked as "**P4**". It was also attached as "Annexure D" to the 1<sup>st</sup> Defendant's trial bundle. The only difference between the

two names is the word “Lira” otherwise the names are so similar so as to cause confusion to the Christians in Lira.

The 2<sup>nd</sup> defendant in its evidence given by Mr Mwesigwa Silverio stated that the 1<sup>st</sup> defendant was erroneously incorporated on 17<sup>th</sup> day of February 2014 with a similar name to that of the plaintiff.

The 2<sup>nd</sup> defendant in order to cure this erroneous registration of the 1<sup>st</sup> defendant exercising the powers granted under the Companies Act wrote to the directors of the 1<sup>st</sup> defendant on 7<sup>th</sup> October 2014 advising them to change the name within six weeks due to its similarity with an already existing name and that it was misleading the general public.

The 1<sup>st</sup> defendant did not heed to the directive of the registrar of companies and continued to use the name Pentecostal Assemblies of God Lira. The 2<sup>nd</sup> defendant again wrote to the directors of the 1<sup>st</sup> defendant on 16<sup>th</sup> February 2015 reminding them of its earlier directive to change the company name.

The plaintiff's and 2<sup>nd</sup> defendant's counsel both submitted in reliance on the case of *STANDARD SIGNS(U) LIMITED V FRED LEO OGWANG T/A SHANDARD & SHANDARD SIGNS LTD HCCS 240 OF 2006*, Justice Hellen Obura as she then was stated that: -

**“From the evidence of PW1 and DW1, it is not in dispute that the plaintiff's Managing Director was the first to choose the name “Standard Signs” which he traded in before registration and subsequently registered it as a business name and a limited liability company. If anybody infringed on the others trade name then it was the person who adopted the name later. If the officers at the registry of business names had carefully conducted a search, they would have realized that the word “Shandard” so nearly resembles the word “Standard” for purposes of business name registration that its registration and use would more likely cause confusion. Consequently, they**

**would have advised the 1<sup>st</sup> defendant to choose another name and this suit would have been avoided”.**

Similarly, in the instant case, the company names of the Plaintiff and the 1<sup>st</sup> Defendant are so identical so much that the Christians in Lira have been confused by them and cannot tell the difference between the two especially in regard to places of Worship.

The 1<sup>st</sup> Defendant has used this confusion to take over the places of worship of the Plaintiff (See Paragraph 21 of the Witness Statement of Pastor Onaga Jacky Franco where he testified that the 1<sup>st</sup> Defendant went and took over the churches belonging to the assemblies that are under the Plaintiff).

The 2<sup>nd</sup> defendant further submitted that they are in agreement with the decision of the learned Judge in above case. The plaintiff is exclusively entitled to the use of both the name and the trade mark. The latter registration which was done erroneously cannot be said to hold the same rights as the former, first in line to register takes precedence over all subsequent registrations.

### ***Determination***

The evidence presented by the plaintiff is uncontroverted by the both defendants and indeed the 2<sup>nd</sup> defendant conceded that it was erroneous to register the 1<sup>st</sup> defendant under similar names which are confusing and misleading.

This court agrees with the decision of Justice Hellen Obura as she then was in ***STANDARD SIGNS(U) LIMITED V FRED LEO OGWANG T/A SHANDARD & SHANDARD SIGNS LTD HCCS 240 OF 2006***, when she stated that: -

*“...If anybody infringed on the others trade name then it was the person who adopted the name later. If the officers at the registry of business names had carefully conducted a search, they would have realized that the word “Shandard” so nearly resembles the word “Standard” for purposes of business name registration that its registration and use would more likely cause confusion.*

*Consequently, they would have advised the 1<sup>st</sup> defendant to choose another name and this suit would have been avoided”.*

It is equally clear to any reasonable person that **‘Pentecostal Assemblies of God Limited’** and **‘Pentecostal Assemblies of God Lira Limited’** are similar. The defendant’s only defence to it is that they are not confusing. In paragraph 4(ii) of the Written Statement of Defence of the 1<sup>st</sup> defendant it contends that *“its name is not similar to that of the plaintiff”*

The 1<sup>st</sup> defendant further in paragraph 4(iii) pleads that: *“the 1<sup>st</sup> defendant and the plaintiff have concurrent right to the use of the name ‘Pentecostal Assemblies of God’ having each derived their title and good will from the common source and origin namely the Holy Bible and Pentecostal Assemblies of God which is a worldwide Pentecostal denomination whose mission is to establish self propagating, self supporting and self governing church bodies in every country”*

The 1<sup>st</sup> defendant tries to justify the similar usage of the name as can be deduced from his pleadings before court.

The 2<sup>nd</sup> defendant as the regulator under the Registrar of companies indeed conceded to the plaintiff’s complaint that the said names are confusing or is similar and tried to correct the same as provided under Section 37 of the Companies Act. Unfortunately the 1<sup>st</sup> defendant refused to heed to the directive.

Section 37 provides;

***(1) Where in the registrar’s opinion the name by which a company is registered gives a misleading indication of the nature of its activities as to likely to cause harm to the public, the registrar may direct it to change its name.***

The law guards against double registration and existence of two companies with similar identical names and the purpose is to protect the owners of the first registered company and the members of the public against confusion and contradiction.

The existence of two companies bearing identical names is likely to cause confusion among the members of the public. The subsequent registration of Pentecostal Assemblies of God Lira Limited after 14 years was a fundamental error on the part of the registrar of companies which error has been admitted and acknowledged by the Registrar of companies which resolves the legality of the 1<sup>st</sup> defendant company. See ***Auto Rescue Limited v Auto Rescue Limited [2008] 2 EA 39***

The court is satisfied that the 1<sup>st</sup> defendant's name is confusing to the public and specifically the people of Lira where the two companies are said to be operating and it was purposely registered to cause the said confusion or ride on the goodwill of the plaintiff.

The registration of the 1<sup>st</sup> defendant by the 2<sup>nd</sup> defendant was unlawful

***Whether the registration of the Plaintiff's trademark "Pentecostal Assemblies of God" by the 2<sup>nd</sup> Defendant was lawful?***

The 1<sup>st</sup> Defendant instituted a Counterclaim against the Plaintiff seeking among other things; an order directing the Registrar General of the 2<sup>nd</sup> Defendant to revoke the certificate of registration of trademark in Class 45 under No. 51402 issued to the Plaintiff on the 08<sup>th</sup> day of April 2015.

The reason for this, as stated in Paragraph 17 of the Counterclaim is that the registration of the trademark was procured fraudulently. One of the particulars of Fraud mentioned is the registration of the name well knowing that it is a worldwide Pentecostal denomination whose mission is to establish self-propagating, self-supporting and self-governing church bodies in every Country.

It was the submission of the plaintiff's counsel that this Court should consider the procedure of registration of a trademark as spelt out in the Trademarks Act No. 17 of 2010. An applicant for the registration of a trademark needs to register the mark in the Uganda Gazette for a period of 60(Sixty) days (Section 11(1) of the Act, Regulation 25(1) of the Trademark Regulations 2012).

A person objecting to the registration may lodge with the registrar of trademarks a notice of objection (Section 12(1) of the Act, Regulation 28 of the Regulations) within the said sixty days.

In the instant case, the 1<sup>st</sup> Defendant does not adduce evidence to show that he ever objected to the registration of the trademark in issue. The 1<sup>st</sup> Defendant is therefore estopped from praying that the trademark of the Plaintiff be revoked.

Further, as discussed above, the Plaintiff was incorporated in 1999 and subsequently registered a trademark in 2014. As first in time owner of the name, the Plaintiff had every right to register a trademark to protect its name and the Registrar of Trademarks was justified in effecting the said registration.

It is therefore their submission that the registration of the Plaintiff's trademark in the name "Pentecostal Assemblies of God" was lawful.

The 2<sup>nd</sup> defendant's counsel in their submission also conceded that plaintiff was lawfully registered as the trade mark owner in accordance with the law and the 1<sup>st</sup> defendant had never made any application for registering this name as their trade mark.

The plaintiff was duly registered in Part B in the name of 'PENTECOSTAL ASSEMBLIES OF GOD' in class 45 under No. 51402 as of December 8, 2014 and issued on the 8<sup>th</sup> April 2015 is lawfully registered.

The 1<sup>st</sup> defendant contended in their written statement of defence, that the plaintiff's trade mark "Pentecostal Assemblies of God" is not inherently capable of distinguishing services offered by the plaintiff.

In addition, the 1<sup>st</sup> defendant and the Pentecostal Assemblies of God which is a Worldwide Pentecostal denomination whose mission is to establish self propagating, self supporting and self governing church bodies in every country with a view of providing services of evangelism, personal and social services, provision of child care, rehabilitation, medical care.

*Determination*



The registration of the plaintiff's trade mark was not opposed and for all intents and purposes it was lawfully registered by the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant is only trying to challenge the same on technical grounds that; it is not capable of distinguishing. Although no evidence was led by the 1<sup>st</sup> defendant to show how it is not capable of distinguishing, the court will proceed to determine whether it is not capable of distinguishing.

In ***AD2000 Trademark [1997] RPC 168 at 173***; the court expressed the view that a sign is "capable of distinguishing" even if it is 'only capable ' to a limited extent of being "not incapable" of distinguishing goods or services of one undertaking from those of other undertakings.

The courts have given a broad interpretation of the phrase "capable of distinguishing"; Under this broad interpretation, a sign is "capable of distinguishing" if it is not "incapable "of doing so. By adopting this interpretation of "capable of distinguishing", a sign's capacity to distinguish may be satisfied by a negative requirement that it is not incapable of distinguishing as opposed to a positive requirement that it can distinguish. See ***Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd Qinghai Xinyuan Foreign Trade Co Ltd [2009] 2 SLR (R) 814***

Signs are incapable of distinguishing if they do not possess either certain inherent characteristics or attributes to distinguish or sufficient capricious additions to enable them to factually distinguish.

In other words, these signs fail to achieve a positive requirement or standard expected of them to distinguish goods or services.

The plaintiff has decided to distinguish its services under the brand name of "Pentecostal Assemblies of God" at least in Uganda it is their distinctiveness that distinguishes them from other people in the similar religious business through their trade mark. It is therefore capable of distinguishing them differently at least in Uganda or Lira where they are operating from.

The registration of "PENTECOSTAL ASSEMBLIES OF GOD" as a trade mark of the plaintiff was lawful.

***Who is the lawful owner of the land & properties claimed by the Parties in Lira?***

The plaintiff's counsel submitted that during the scheduling in Court, this issue was mutually agreed upon by both parties and the same was included in the issues.

The Plaintiff then filed an additional witness statement and trial bundle respectively. In the said witness statement, the General Secretary explained that the Plaintiff is made up of twenty-four pastorates and Lira Pastorate was one of them. He further explained that Lira is comprised of five political districts and Seventy-Eight Assemblies and that an Assembly is comprised of five to ten branch churches.

The Plaintiff then listed the property that it was able to acquire and for which it has land titles. The rest of the Property is customarily owned since this is the unique land ownership that is especially peculiar to Northern Uganda. The copies of the title marked as "Exhibit A" and the rest of other customarily owned churches of the Plaintiff marked as "Exhibit B" were all attached.

The 1<sup>st</sup> Defendant also filed an additional trial bundle comprising of its purported properties. Important to note is that the copies of the sale agreements attached relate to land in Pader and Tororo District respectively, none of which falls in the Plaintiff Lira Pastorate.

The copy of the land purchase agreement that he attached on Page 19 of his additional trial bundle indicates that it was sold to Ober of PAG CHURCH which is the Plaintiff. The other documents relate to people from other districts and Countries (South Sudan) asking to join the 1<sup>st</sup> defendant's church. Most of the documents attached are not translated and most importantly, do not show ownership by the 1<sup>st</sup> Defendant of any Church in Lira.

It is therefore evident, that the 1<sup>st</sup> Defendant solely incorporated with the aim of confusing and misleading the Christians in Lira as well as taking over the property of the Plaintiff. There is no property that the 1<sup>st</sup> Defendant can point out as belonging to it in Lira.

In the circumstances, the plaintiff's counsel invited this Court to totally disregard this fabricated evidence of ownership of property as presented by the 1<sup>st</sup> Defendant and declare the Plaintiff as the rightful owners of its churches within the Lira Pastorate and also order the 1<sup>st</sup> Defendant to return all the Plaintiff's properties which it has unlawfully occupied.

The issue of ownership of property is a question of fact and the same can only be proved through available evidence by way of documents of title ie Certificates of title in the names of the owner or agreements for purchase of land.

The plaintiff is the rightful owner of all the land acquired in its names and any one holding onto such land without authority of the plaintiff is doing so as a grabber and this court would not wish to encourage such conduct of forceful taking over of property.

The 1<sup>st</sup> defendant as a breakaway church or unit are at liberty to begin afresh under different names rather than resorting to unlawful means of taking over property acquired and registered in the names of the plaintiff.

***What are the remedies available to the parties?***

- a) This court declares that the 1<sup>st</sup> Defendant was unlawfully and erroneously registered by the 2<sup>nd</sup> Defendant.
- b) The registration of the 1<sup>st</sup> defendant should be cancelled by the Registrar of Companies forthwith.
- c) This court declares that the registration of the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant with a name closely resembling the trademark of the Plaintiff is unlawful.
- d) A Permanent Injunction issues restraining the 1<sup>st</sup> Defendant from using or trading under the name "Pentecostal Assemblies of God Lira Limited."

- e) A declaration that all the properties registered in the names of the plaintiff and illegally held by the 1<sup>st</sup> defendant should be returned to the plaintiff.
- f) The plaintiff's counsel sought general damages and aggravated damages.

### ***Aggravated Damages***

In the instant case, the 1<sup>st</sup> defendant by deliberately incorporating with a name that was similar to that of the Plaintiff knowing that the same would cause confusion to the Christians in Lira, the Defendant acted in a high handed and fraudulent manner and for that, they should be condemned in aggravated damages.

This court is satisfied that the actions of the 1<sup>st</sup> respondent ought to be punished by way of awarding aggravated damages. If it were not for the actions of the 1<sup>st</sup> respondent, this matter would not have been in court.

Secondly, the 2<sup>nd</sup> respondent wrote to the 1<sup>st</sup> defendant and directed it to change the name but still refused to heed to the directives of the regulator. This court awards a sum of 12,500,000/= as aggravated damages against the 1<sup>st</sup> defendant.

### ***General damages***

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See ***Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21***

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

In the present case, the plaintiff has sought general damages but did not lead any evidence to show the nature of the general damage suffered. No general damages are awarded.

g) Costs

The plaintiff is awarded costs of the suit. The 1<sup>st</sup> defendant shall pay two thirds of the costs and the 2<sup>nd</sup> defendant shall pay one third of the costs.

It is so ordered.

**SSEKAANA MUSA**  
**JUDGE**  
**1<sup>st</sup>/11/2019**