

SC/COM/JICA/000471/2021

IN THE SUPREME COURT OF MAURITIUS
(Commercial Division – In Chambers)

In the matter of:

AFRICAN NETWORK INFORMATION CENTRE (AfrinIC) Ltd

V

CLOUD INNOVATION LTD

Applicant

In the presence of :

Respondent

1. MAURITIUS COMMERCIAL BANK LTD
2. SBM BANK (MAURITIUS) LTD

Garnishees

ORDER

Mr A Moollan SC, appears together with Mr B Radhakisson of Counsel, Mr K Dhondee, of Counsel, Miss P Gokhool, of Counsel and Miss J Chinien, of Counsel, instructed by Mr M Mardemootoo SA, who is in attendance.

Mr G Glover SC appears for the respondent, instructed by Mrs Attorney Y Hurnaurn-Calcuttea, who is in attendance.

Both Counsel state that their respective written submissions have been filed.

Mr Glover SC refers to the affidavit uploaded by the respondent on 06 August 2021 wherein the latter replied to the issues raised in the application and the affidavit in reply thereof uploaded by the applicant on 09 August 2021. He adds that following the order made on 11 August 2021 wherein legal advisers were informed that only procedural aspects pertaining to the application would be addressed at today's sitting, the respondent will not in the circumstances rely on that affidavit and moves that it be dropped.

Mr Moollan SC states that the respondent did not supplement its preliminary objections raised at the sitting of 04 August 2021 and has chosen to embark on another course but adds that there is no objection to the above motion. He further adds that since the affidavit will not be relied upon, he will not insist on the objection raised by the applicant as to the *mandat special* of Mr Attorney Ramdhur to swear affidavit on behalf of the respondent.

At this stage, I draw the attention of Mr Moollan SC to the provisions of the law governing the procedure for a *saisie arrêt* i.e Section 71 of the Courts Act and article 557 *et sequitur* of the

Code de Procédure Civile and remark that the present application entered under section 806 of the Code of Civil Procedure is misconceived, since the applicant has only two options at this stage of the proceedings. It can either ask for a *main levée of the saisie arrêt* or for a *cantonnement* and this can be done in case bearing cause No. SC/COM/JICA/000476/2021 itself which is the application for validation of the attachment proceedings and where the applicant has already put in an appearance but has not yet filed any affidavit. Reference is made to the different steps set out in the cases of:

- (i) The Mauritius Commercial Bank Ltd v Sibartie Fils and Cie 1988 SCJ 110
- (ii) AfrAsia Bank Ltd v Mauritius Duty Free Paradise Co Ltd & Ors 2018 SCJ 61
- (iii) Mauritius Duty Free Paradise Co Ltd v Afrasia Bank Ltd & Ors 2020 SCJ 105

Mr Moollan SC replies that the affidavit will be sworn shortly in case bearing cause No. SC/COM/JICA/000476/2021.

He refers to the case of ***The Honourable Attorney General v European Investment Ltd & anor [2009] SCJ 98*** at paragraph 49 at page 14 of his written submissions and reiterates that paragraph in support of this application.

After an exchange of views and upon hearing legal advisers, I fully subscribe to the submissions of Mr Glover SC at paragraph 45 of his written submissions to the effect that:

"...the judge in Chambers cannot exercise her equitable discretion under Section 806 of the Code de Procédure Civile inasmuch as the Applicant is bound to seek any nullity/variation/variation in accordance with the prescribed procedure pursuant to Article 567 of the Code de Procédure Civile and/or Section 71(e) of the Courts Act as applied by the Supreme Court of Mauritius, the more so as the proceedings to hold good and valid the Saisie has already started and the applicant has put in an appearance. The Applicant's attempt to invoke the jurisdiction of Section 806 of the Code de Procédure Civile would be short circuiting the essence of the protection afforded by the conservatory nature of an attachment order".

For the above reasons, the preliminary objection raised by the respondent in respect of the jurisdiction of the Judge in Chambers must succeed. The application is therefore set aside, with costs. I certify as to Counsel.

Chambers, 13 August 2021.


V. Kwok Yin Siang Yen
JUDGE