

**CLOUD INNOVATION LTD v AFRICAN NETWORK INFORMATION CENTRE
(AFRINIC) LTD**

2022 SCJ 51

Record No. 121865

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Cloud Innovation Ltd

Appellant

v.

African Network Information Centre (Afrinic) Ltd

Respondent

JUDGMENT

This is an appeal against a judgment of the learned Judge in Chambers delivered on 7 July 2021 setting aside an application for injunctive relief.

At the hearing, the appellant dropped grounds 1(v), 2, 3 and 5 out of the 7 grounds of appeal. We, however, do not propose to deal with the merits of the remaining grounds of appeal for the reasons set out below.

During the hearing, reference was made to 2 other Judge in Chambers applications as well as a “main case”. As a superior Court of record, some disturbing features have now come to our attention. In the present case, the appellant (then applicant) had applied in essence for an injunction restraining and prohibiting the respondent from terminating the membership of the appellant as a resource member of the respondent (“the first application”). In the judgment delivered on 7 July 2021, the learned Judge in Chambers upheld a preliminary objection raised by the respondent and set aside the first application with costs, hence the present appeal.

Subsequently, Court records reveal that the same appellant lodged a series of applications before different Judges sitting in Chambers on 12 July, 13 July, 3 September, 6 September, 26 November, 1 December and 3 December 2021. The particulars of these applications and of the first application have been set out in tabular form in an annex to this judgment (Annex A).

From a reading of all these applications, it is patently clear that the appellant was in effect praying for the same remedy in all of them, namely to restrain and prohibit the respondent from terminating the membership of the appellant as a resource member of the respondent. All the applications have been set aside except for the ones lodged on 6 September 2021 and 3 December 2021.

For the purposes of this appeal, the application lodged on 3 December 2021 (“the last application”) is of particular interest. In this application, the learned Judge in Chambers granted, *ex parte*, an interim order in the following terms:-

“... let an interim order in the nature of an injunction issue, restraining and prohibiting the respondent, either by itself, its agent, representatives or préposé from:

- (i) acting in any manner whatsoever on or giving effect to its Board Resolution of the 8th July 2021 or any similar Board resolution or its letter of the 1st December 2021 or any other similar letter, in any manner whatsoever, which has the effect of terminating the membership of the applicant in the respondent as a Resource Member; and*
- (ii) acting on or giving effect to its decision, in any manner whatsoever, which has the effect of breaching the Undertaking of the 15th July 2021 in application bearing Serial No. 1040/2021.”*

The matter has now been made returnable to show cause why the interim order should not be made interlocutory “*pending the determination of the disputes between the parties*”.

Learned Counsel for the appellant has invited us to quash the judgment in the first application and to remit it for consideration before a different Judge. We are of the view that this would serve no useful purpose and be a waste of time and resources. In the light of the above, it is clear that the appellant has already been granted interim injunctive relief in wide terms in the last application but is still insisting on proceeding with the first application wherein it is in effect applying for the same remedy. There is no *raison d'être*

for the first application and hence for this appeal. It is a matter of regret that, with regard to their duty towards the Court, the legal advisers did not deem it fit to apprise us of the existence and particulars of the last application where the appellant has, in the meantime, been granted interim injunctive relief. We must also express our concern at the number of successive applications lodged by the appellant against the respondent praying in effect for the same remedy. It would seem that the appellant is bent on having multiple bites at the cherry.

In these circumstances, contrary to what we were told at the hearing, we are of the view that, even if we were to allow the present appeal, it would be academic and serve no practical purpose. In this context, it is apposite to the following dictum in **McNaughton v McNaughton's Trs. (1953) SC 387**, quoted with approval in **Planche v The PSC [1993 SCJ 128]**:-

“Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau.”

We wish to add that, as far as we have been able to ascertain, no main case has been lodged by the appellant so far.

For the above reasons, we are of the view that the pursuance of this appeal would constitute an abuse of the process of the Court. This appeal is accordingly set aside with costs.

D. Chan Kan Cheong
Judge

R. Teelock
Judge

14 February 2022

Judgment delivered by Hon. D. Chan Kan Cheong, Judge

**For Appellant : Mrs Y. Hurnaurn-Calcuttea Attorney-at-Law,
Mr N. S. Singla, Queen Counsel together with
Mr R. Gulbul, of Counsel**

**For Respondent : Mr M. Mardemootoo, Senior Attorney
Sir H. Moollan, Queen Counsel together with
Mr A. Radhakissoon, of Counsel
Mr A. Adamjee, of Counsel
Ms P. Gokhool, of Counsel
Ms S. Chinien, of Counsel**

ANNEX A

(Cloud Innovation Ltd. v AfriNIC Ltd. – Applications for Injunction)

APPLICATIONS	PRAYERS
<p style="text-align: center;"><u>1st Application</u></p> <p>SC/COM//WRT/000168/2021</p> <p>Lodged on 24 March 2021</p> <p>Interim Order granted on 29.03.2021</p> <p>Judgment delivered on 7 July 2021.</p> <p>Set Aside</p>	<p>Restraining and prohibiting respondent from :</p> <p>(i) terminating, suspending and/or revoking the membership of the applicant as Resource Member of the respondent in any manner whatsoever, which membership has been duly renewed on 1st January 2021;</p> <p>(ii) resolving through its Board directly and/or indirectly that the membership of the applicant be terminated, suspended, revoked and/or otherwise altered in any manner whatsoever;</p> <p>(iii) resolving through its Board directly and/or indirectly that the applicant be removed as a member of the respondent as defined under sections 1 and 296(2) of the Companies Act 2001;</p> <p>(iv) acting in any manner whatsoever and/or giving effect to the letter of the 10th March 2021 issued by the respondent; and</p> <p>(v) interfering with the peaceful and uninterrupted enjoyment of its membership until such membership is terminated, suspended or revoked, pending the dispute soon to be resolved before the competent jurisdiction.</p>
<p style="text-align: center;"><u>2nd Application</u></p> <p>SN 1030/2021</p> <p>Lodged on 12 July 2021</p> <p>Set Aside</p>	<p>Restraining and prohibiting respondent from :</p> <p>(i) acting in any manner whatsoever on its Board resolution dated 8th July 2021 which had the effect of terminating the membership of the applicant in the respondent;</p> <p>(ii) freezing in any manner whatsoever, any or all of the resources allocated to the applicant;</p> <p>(iii) denying the applicant access to the AFRINIC WHOIS database; and</p> <p>(iv) reclaiming any or all of the resources allocated to the applicant, pending appeal</p>
<p style="text-align: center;"><u>3rd Application</u></p> <p>SN 1040/2021</p> <p>Lodged on 13 July 2021.</p> <p>Interim Order granted</p> <p>Set Aside</p>	<p>Same 4 prayers as the 2nd Application, save and except, pending main case to be entered by applicant.</p> <p>Undertaking given by respondent on 15.07.2021.</p>

<p style="text-align: center;"><u>4th Application</u></p> <p>SN 1378/2021</p> <p>Lodged on 3 September 2021.</p> <p>Set Aside</p>	<p>A. Restraining and prohibiting respondent from :</p> <p>(i) acting in any manner whatsoever on its letter of the 27th August 2021 bearing ...; and</p> <p>(ii) terminating and/or suspending the membership of the applicant as Resource Member of the respondent in any manner whatsoever, and/or pursuant to letter of the 27th August 2021.</p> <p>B. Mandatory Order – respondent to disclose to the applicant the internet addresses, domain names, URLs, and all other factual evidence gathered regarding the 632 active and operational sites relating to illegal gambling, illegal streaming of movies and other copyrighted content, and/or adult content/pornography sites including some with indecent images of children as stated in letter of the 27th August 2021 within 24 hours from service of the present order, pending appeal</p>
<p style="text-align: center;"><u>5th Application</u></p> <p>SN 1382/2021</p> <p>Lodged on 6 September 2021</p> <p>Interim Order declined, application still pending,</p> <p>Mention – 17 February 2022</p>	<p>Same prayers A & B as the 4th Application, pending main case to be entered by applicant.</p>
<p style="text-align: center;"><u>6th Application</u></p> <p>SN 1894/2021</p> <p>Lodged on 26 November 2021.</p> <p>Set Aside</p>	<p>(i) maintaining the <i>status quo</i> quoad the membership of the applicant as a Resource Member in the respondent; and/or</p> <p>(ii) restraining and prohibiting respondent from giving effect, in any manner whatsoever, to its decision to withdraw its undertaking given before the Hon. Judge on 15th July 2021 in injunctive application (SN 1040/2021 – 3rd application), whether directly or indirectly or any decision to terminate the membership of the applicant in the respondent as a resource member, pending dispute between parties.</p>

<p style="text-align: center;"><u>7th Application</u></p> <p>SN 1928/2021</p> <p>Lodged on 01.12.2021</p> <p>Set Aside</p>	<p>Same prayers as the 6th application.</p>
<p style="text-align: center;"><u>8th Application</u></p> <p>SN 1947/2021</p> <p>Lodged on 03.12.2021</p> <p>Interim order granted</p> <p>Mention - 15 February 2022</p>	<p>Restraining and prohibiting respondent from :</p> <p>(i) acting in any manner whatsoever on or giving effect to its Board Resolution of the 8th July 2021 or any similar letter, in any manner whatsoever, which has the effect of terminating the membership of the applicant in the respondent as a Resource Member and/or</p> <p>(ii) acting on or giving effect to any of its decision, in any manner whatsoever which has the effect of breaching the undertaking of the 15th July 2021 in SN 1040/2021.</p> <p>Same prayers as the 7th Application, pending the final resolution of the dispute between parties.</p>