

Company law

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 526 OF 1994

BETWEEN:

STUTTAFORDS (PVT) LTD PLAINTIFF

AND

STUTTAFORDS LTD DEFENDANT

CORAM: **MSOSA J**

Kasambala, of Counsel for the plaintiff
Unrepresented, Counsel for the defendant
J. S. M. Sokabande, Official Interpreter

JUDGMENT

This is an application by the plaintiffs who seek for the following orders:-

- (a) striking out the name of the defendant in the company names registry as the same is misleading in that it closely resembles the name of the plaintiffs; and
- (b) an injunction restraining the defendants from using the said name in their business.

The application is supported by an affidavit deposed to by one of the shareholders and director of the plaintiffs' company. The defendant was served with the originating summons and the notice of hearing of the plaintiffs application. They decided not to respond in any way. I therefore proceeded to hear the application in their absence.

The facts of this case as can be extracted from the plaintiffs' affidavit are straight forward and clear. The plaintiffs' company was incorporated and registered in Malawi on 15th February, 1993 in the name of Stuttafords (Pvt) Limited and a certificate of incorporation was issued by the Registrar of companies the same day. The company is mainly engaged in the business of freight, removals and clearing within Malawi, and also outside Malawi in conjunction with a sister company called Stuttafords Removals Limited of Harare, Zimbabwe whose managing director is also a director of the plaintiffs company. On 15th February, 1994, the defendants registered their company in the name of 'Stuttafords Limited' and a certificate of incorporation was consequently issued in that name on the same day. The plaintiffs believe that the defendants company was incorporated

with the sole objective of engaging itself in the business of removals, freight and clearing. Incidentally one of the shareholders of the defendants company is Glens (Malawi) Limited who are in the business of removals, freight and clearing.

The plaintiffs contend that the names of the two companies are so similar that there is likely to be confusion in the eyes of customers as to which company they are dealing with and that they believe that some people who have dealt with or will deal with the defendants company believing it to be the plaintiff's company. The plaintiffs also state that the incorporation of the defendants company was calculated to mislead the public.

The plaintiffs action is founded on the tort of passing off. The principle on which the court interferes in cases of passing off is that a person should not be permitted to represent the business which is carried on by another as carried on by himself. Further that the basis of the action for passing off is a proprietary right not so much in the name itself but in the good will established through the use of the name in connection with the plaintiff's business - see **Tussaud v Tussaud (1890) 44 Ch. D. 678.**

In the present case the plaintiffs company is called 'Stuttafords (Pvt) Limited' and the defendants company is 'Stuttafords Limited'. I find on the facts before me that both companies are involved in the same line of business. The plaintiffs company was registered and incorporated first and it was not until a year later that the defendant incorporated and registered their company. I have no problems in finding that the names of the two companies are so similar that they would cause confusion in, the people dealing or wishing to deal with them in identifying one from the other. The confusion is further compounded by the fact that the two companies are in the same line of business.

A company has a common law right to restrain, another company which has or is about to register under the same name as itself, from the use of that name. The company has a similar right under common law if it can show that the name of the other company which it has registered is the same as or so similar to its name that confusion has existed or that persons have dealt with that other company believing that it is its company - in this respect the sound as well as the spelling of the name is material - see **Hendriks v Montagu (1881) 17 ch. D 638.**

I have already said that the names of the two companies herein are so similar that they would cause confusion in anyone dealing or wishing to deal with any of them. I would in the circumstances grant the plaintiffs prayer. I therefore order that:-

- (a) the defendants name be struck out from the company names register as the same is misleading and closely resembles the name of the plaintiffs; and

(b) the defendant is restrained from using the said name in their business.

The defendant is condemned in costs.

Made in Chambers on the 9th day of February, 1995.



Mrs A S E Msosa

JUDGE