

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL COURT DIVISION)**

**CIVIL SUIT NO. 287 OF 2010**

**UGANDA PERFORMING RIGHTS SOCIETY.....PLAINTIFF**

**VERSUS**

**MTN (U) LTD.....DEFENDANT**

**BEFORE HON. LADY JUSTICE HELLEN OBURA**

**JUDGMENT**

The plaintiff instituted this suit against the defendant seeking for a declaration that the MTN concert at which UB40 held a public performance in Kampala in February 2008 was unauthorized and sought special damages of 3% of the gross gate collections realized from the concert, general damages for infringement of copy right, interest and costs of the suit.

On the 23<sup>rd</sup> of February 2008 the UB40, a United Kingdom based band performed a concert at Lugogo grounds in Kampala upon being contracted by the defendant on the 24<sup>th</sup> of December 2007.

It is the plaintiff's case that prior to the public performance the individual members of UB40 executed Deeds of Assignment wherein they assigned all their copyrights for purposes of effective management to the Performing Rights Society of UK (hereinafter called PRS (UK))

The Act was enacted in Uganda to give effect to the guidelines in the TRIPS agreement. It does recognize the need for the collecting society in Uganda to enter into reciprocal agreement with foreign societies or other bodies of authors or neighbouring rights owners for the issue of authorization in respect of their members' works and for the collection and distribution of copy rights fees deriving from those works. This is clearly provided under section 58 (c) of the Act as one of the functions of any society or body that so wishes to be registered as a collecting society.

In view of the above, I would answer the question as to whether PRS (UK) could confer the power to enforce those rights to another collecting society in the affirmative because to state otherwise would undermine the global efforts in enforcing intellectual property rights. That now leads me to consider the specific provisions of the contract in order to determine whether the plaintiff was clothed with the power to sue in its names as it claims.

I have carefully looked at the relevant provisions of the said contract and particularly article 2 (1) (c) which provides as follows:-

- (1) The exclusive right to authorize performances, as referred to in Article 1, entitles each contracting societies, within the limits of the powers pertaining to it by virtue of the present contract, and its own Articles of Association and rules, and of the national legislation of the country or countries in which it operates-*
- (a) .....*
  - (b) .....*
  - (c) To commence and pursue, either in its name or that of the author concerned, any legal action against any person or corporate body and any administrative or other authority responsible for illegal performances.*

The above provision of the contract empowered the plaintiff to sue either in its name or in the name of the author in whose work the copy right is alleged to have been infringed. That was the clear intention of the parties to the contract. This

court is of the opinion that where the plaintiff opts to sue in its name like in this case then no power of attorney would be required. However, where it opts to sue in the names of the author then a power of attorney would be required because then it would be acting as an agent.

I also want to believe that even the requirement for the assignor to execute a deed or power of attorney as provided under article 4 of the Deeds of Assignment would only be relevant where PRS (UK) would be suing in the names of the assignor. All in all, it is the view of this court that the plaintiff was conferred with the power to commence and pursue any legal action in its name. As to whether the plaintiff has a cause of action is another issue to be determined in this suit but at least it is clothed with the power to bring an action in its names.

All the authorities relied upon by counsel for the defendant are distinguishable from this case and irrelevant because they relate to plaintiffs who were suing as agents and not in their own rights. This answers the second issue in the affirmative.

**Issue 1: Whether the plaintiff has a cause of action.**

The guidelines on whether a plaint discloses a cause of action were stated by the Court of Appeal for East Africa in **Auto Garage v Motokov (No. 3) [1971] EA 514** as follows:

- i. The plaint must show that the plaintiff enjoyed a right.
- ii. That right has been violated
- iii. That the defendant is liable.

These are the three key ingredients of a cause of action that I will proceed to consider as sub-issues.

**i. Whether the plaintiff enjoyed a right.**

On this sub-issue, counsel for the plaintiff submitted that by virtue of the Deeds of Assignment signed by members of UB40, all economic and performing rights were vested in the PRS (UK) as the legal owner of the rights who then mandated the

plaintiff to manage and enforce its rights in Uganda. According to the plaintiff, after assigning their rights, the members of UB40 no longer had any rights to transfer and to that extent could not exercise any ownership rights in the works in relation to public performance held in February 2008 in Kampala. The case of **Performing Right Society Ltd v Harlequin Record Shops Ltd (1972) 2 All ER 828** was cited for the holding that where the original owner of the copyright assigns his works, he no longer owns the performing rights.

As to whether the right has been violated and if the defendant was liable, counsel for the plaintiff argued that the copyrighted works which they seek to enforce were assigned to the PRS (UK) as provided for under section 14(1) (a) of the Act and under section 44(1) the defendant had to seek a license from the owner or owner's agent before causing the works to be performed in public. It is the plaintiff's case that the defendant ignored reminders from the plaintiff vide Exhibit P5(ii) and P3, to secure the license and by going ahead to organize the performance violated the plaintiff's right amounting to infringement within the meaning of section 46 of the Act.

The defendant's counsel argued that the plaintiff had no right as the rights were given to the PRS (UK) and not the plaintiff. He contended that the plaintiff and defendant were not parties to the Deeds of Assignment and the defendant is not a party to the reciprocal agreement. He argued that as such the defendant could not be held liable for breach of the deeds to which it was not a party. According to counsel for the defendant, if there is no right for a party, there cannot be breach because the assignment was not a transfer but rather a right to administer/manage the rights of a composer or artist and not to replace the artist as the performers. He cited section 14(1) (a) and (b) of the Act as clearly drawing a distinction between assignment and transfer by providing for each separately.

Section 3 of that Act is on its application. It provides that the Act applies to any work, including work, created or published before the commencement of the Act, which has not yet fallen into public domain where the work is; (a) created by a citizen of Uganda; (b) first published in Uganda, irrespective of the nationality or residence of the author; (c) created by a person who is a national of or resident in a

country referred to in section 81 or; (d) first published in a country referred to in section 81.

Section 81 of the Act provides for reciprocal protection of copyrights. It states thus:-

*"A copyright or neighbouring rights owner who is not a citizen or resident of Uganda shall be protected under this Act if the work was first published in a country which is-*

- (a) A member of any of the organizations specified in Part I of the Second Schedule to this Act; or*
- (b) A signatory to any of the international conventions specified in Part II of the Second Schedule to this Act".*

The organizations specified in Part I of the Second Schedule are World Intellectual Property Organisations (WIPO), Africa Region Intellectual Property Organisation (ARIPO), The United Nations Educational Scientific and Cultural Organisation (UNESCO) and The World Trade Organisation. The international convention specified in Part II of the Second Schedule is The Trade Aspects of Intellectual Property Rights Agreement (TRIPS).

This court has already made a finding above that by the respective Deeds of Assignment some individual members of the UB40 assigned all their performing rights in their musical works to PRS (UK). Furthermore, that PRS (UK) entered into a contract of reciprocal representation with the plaintiff that conferred exclusive rights on the plaintiff to grant the necessary authorizations for all public performances in Uganda.

This finding is supported by the clear provisions of the contract of reciprocal representation already referred to above under issue number two and held to have conferred ownership of those rights to PRS (UK). It is therefore the view of this court that PRS (UK) as the owner of the copyrights is given protection under sections 3 and 81 of the Act. I have also already made a finding under the second issue that PRS (UK) conferred the right to enforce those rights on the plaintiff under the contract of reciprocal representation. I therefore find that the plaintiff

**ii. Whether the right has been violated.**

As regards this sub-issue, PW2 testified that some members of the UB40 had assigned their performing rights to PRS (UK). PW1 also stated during cross examination that he was not aware whether the group that performed in the UB40 concert in Kampala comprised of members who signed the Deeds of Assignment. In view of this evidence, it was the duty of the plaintiff to prove firstly; that the members of the UB40 who performed in Kampala under the auspices of the defendant were the ones who had assigned their right of performance to PRS (UK) which the plaintiff is mandated to enforce in Uganda. Secondly; that the songs they performed were part of the music work that were assigned. Short of that there would be no infringement of the copy rights and as such no violation of the plaintiff's rights under the contract.

I have thoroughly examined the evidence on record but failed to locate any that link members of the UB40 who assigned their performance rights to the ones that performed at the UB40 concert in Kampala. Neither did I find any credible evidence showing the particular songs that were performed apart from a list of songs that was admitted in evidence as Exhibit P4 (i). Even then, during cross examination PW2 testified that much as some of the songs on that list were composed by some members of the UB40, she could neither tell who the particular composers were nor confirm that they were played at the UB40 concert in Kampala. The plaintiff appeared to have based its case on the assumption that all members of the UB40 had assigned their copy rights in their music work to PRS (UK). That assumption has been rebutted by the evidence of PW1 and PW2 as indicated above.

In the circumstances, I find that the plaintiff has failed to prove that the rights it acquired under the contract of reciprocal representation have been violated. For that reason, this court finds that the 2<sup>nd</sup> key ingredient of a cause of action has not been proved. It is also unable to consider the 3<sup>rd</sup> key ingredient which presupposes that there is a violation. On the whole, I find that two very important ingredients that constitute a cause of action are lacking. I therefore hold that the plaintiff does not have any cause of action against the defendant. This answers the first issue in

Ordinarily I would be inclined to dismiss this case at this point as it discloses no cause of action. However, just in case I misdirected myself on this issue, I will proceed to consider the 3<sup>rd</sup> and last issue as I am required to do for purposes of assessing damages if at all it is proved, to ease the work of the appellate court in the event that this matter goes on appeal and succeeds.

**Issue 3: . Whether the defendant is liable to pay royalties to the plaintiff.**

I must point out from the onset that I will consider this issue based on the assumption that the 1<sup>st</sup> issue was answered in the affirmative. The plaintiff sought for special damages of 3% of the gross gate collections owing to the alleged infringement by the defendant. The evidence that was adduced to prove the claim was based on the media report. PW1 testified that he wrote a demand letter to the defendant requesting for payment of Shs. 41,400,000/= being 3% of the gross gate collections. He then justified it in his evidence as follows:-

*"We arrived at the figure of the tickets sold from the media and internet. Even some staff of MTN especially Mr. Van Veen talked to the press about the same figures. We had to rely on this source of information after MTN (U) failed to cooperate with us to give us the figure".*

As one would expect, counsel for the defendant objected to that source of information as being hearsay. He argued that the site where the information was got needed to be named and unless Mr. Van Veen was going to be called as a witness his alleged message to the press could not be relied upon. Counsel for the plaintiff conceded that the information was hearsay. He then sought to rely on Exhibit P5 (iv) which counsel for the defendant also challenged for containing hearsay information.

It is a well settled principle of law that special damages must be specifically pleaded and strictly proved. See: **Eladam Enterprises Ltd v S.G.S (U) Ltd & others Civil Appeal No. 20 of 2002 [2004] UGCA 1, KCC v Nakaye (1972) EA**

**446 and Ronald Kasibante v Shell Uganda Ltd HCCS No. 542 of 2006 [2008]  
ULR 690**

As argued by counsel for the defendant, the plaintiff relied on hearsay evidence from the media and the internet to support its claim for special damages. Surely, was that the best that could be done in view of Order 10 of the CPR which provides for interrogatories, discovery and inspection? The plaintiff could have applied under that Order to obtain documents from the defendant that would give the actual gate collections instead of basing its claim on the alleged media reports which this court was not even shown. That hearsay evidence is merely speculative and cannot be relied upon by this court to assess and award special damages. In any event it is not admissible as it offends the evidence rule. Since the plaintiff has not strictly proved its claim for special damages it would fail.

Otherwise, if the plaintiff had a cause of action against the defendant and had adduced evidence to show the actual gross gate collections and proved the applicable percentage of royalty chargeable, I would have found the defendant as the organizer of the UB40 concert who was under a duty to get a license for the same liable to pay royalty to the plaintiff. On that basis I would have awarded the approved percentage of the gross gate collections to the plaintiff. That amount would have attracted interest at court rate from the date of filing the suit until payment in full.

As regards the prayer for general damages, if infringement of the copyrights in the assigned music works had been proved, I would have only awarded nominal damages of Shs. 3,000,000/= to the plaintiff as opposed to general damages since there was no proof that any injury had been occasioned to the plaintiff.

However, since I have already ruled that the plaintiff has no cause of action against the defendant, this suit must fail and it is dismissed with costs.

I so order.





Hellen Obura

**JUDGE**

Judgment delivered in chambers at 3.00 pm in the presence of Mr. Paul Asiimwa for the plaintiff and Mr. Samuel Gimanga who was holding brief for Mr. Andrew Kibaya for the defendant. Mr. Dick Matovu an official of the plaintiff society was present but officials of the defendant were absent.



**JUDGE**

21/12/12

It is further alleged that in the Deeds of Assignment, the PRS (UK) was granted management of all copyrights worldwide. On the 26<sup>th</sup> of January 2006 the PRS (UK) signed a contract of reciprocal representation with the plaintiff. The plaintiff's General Secretary on knowing that the defendant intended to sponsor the UB40 artists informed them of their obligation to pay performance royalties which the defendant did not adhere to. The plaintiff claims to have suffered loss due to the defendant's act.

In its defence, the defendant asserted that whereas it is alleged that members of UB40 had assigned their rights to the PRS (UK), such assignment could not and did not stop the enjoyment by the assignors of their personal rights neither did it operate as surrender, transfer or sale of the UB40 individual member's copyrights.

It was the defendant's case that the UB40 as the proprietors of the copyrights reserved the exclusive rights to contract and deal with their copyrights without prior authorization of anybody including the PRS (UK).

The defendant further contended that it could not be taken to have infringed any copyright law as it was duly authorized by the individual members of UB40 to organize the concert and in any case the plaintiff could only be an agent of a disclosed principal and for that reason the defendant was under no obligation to contract with the plaintiff when it could contract with UB40.

The defendant further averred that the purpose of the execution of the alleged Deeds of Assignment was not to strip the group of their inalienable performance rights but rather to create a mechanism for the protection of the assignors' rights from infringement by third parties.

At the scheduling conference the agreed facts were as follows:

1. There was a performance by the UB40 in February 2008 in Kampala.
2. The concert was held and attendance paid for upon entry.
3. There were no payments made to the plaintiff by the defendant for the UB40 concert.
4. The defendant paid UB40 for the performance.

The following issues were framed for determination:

1. Whether the plaintiff has a cause of action against the defendant.
2. Whether the plaintiff has locus standi to sue the defendant.
3. Whether the defendant is liable to pay royalties to the plaintiff.

Upon hearing evidence for both parties, both counsel filed written submissions. In their submissions, the second issue was argued first. I will proceed to determine the issues in the order that counsel argued them.

**Issue 2: Whether the plaintiff has locus standi to bring this action.**

It was the evidence of PW1 that the plaintiff is a duly registered collecting society which administers copyright for its members and those of foreign societies that it represents in Uganda. The plaintiff submitted Exhibit P2 in which the PRS (UK) admitted the reciprocal contract between themselves and the plaintiff was in force at the time the cause of action arose.

According to PW3 the purpose of the reciprocal agreement was to allow proper management of copyright works by local societies on behalf of the foreign societies that may not personally be involved in the management in the local area where the protected works are exploited. A contract of reciprocal representation was admitted in evidence and marked Exhibit P6.

He referred to the case of **Performing Rights Society Ltd v Grand Theatres Ltd and another [1970] 1 EA 576** where it was held that specific assignments were sufficient to convey legal interest in the performing rights to the plaintiff and the plaintiff was entitled to bring the action without joining the authors as co-plaintiffs.

Counsel for the plaintiff submitted that article 2 (1) (c) of Exhibit P.6 mandated the plaintiff to commence and pursue in its name any legal action against any corporate body for illegal performance of works. He argued that the plaintiff had

locus to sue in their own name on the basis of the reciprocal agreement and the above cited authority.

According to the defendant's counsel, the plaintiff had no locus standi to bring the suit in its name. It was argued that the plaintiff was distinguishable from the PRS (UK) and that a suit for the benefit or on behalf of the PRS (UK) could only be commenced by itself as a competent party or through its agent.

Counsel for the defendant highlighted the evidence of PW1 where he stated that the plaintiff was an assignee and at another point said that the plaintiff was only enforcing the rights of the PRS (UK). His view was that the Deeds of Assignment marked Exhibit P1 (i) – (viii) were made in favour of the PRS (UK) and not the plaintiff.

Counsel for the defendant cited Order 3 rule 2 of the Civil Procedure Rules (CPR) for the position that recognized agents for the purposes of court proceedings are persons holding powers of attorney authorizing them to make such appearances, and applications and do such acts on behalf of the parties.

He cited the case of **Oboth Marksons Jacob v NRM Misc. Application No. 108 of 2010**, **Jeshang Popat Shah v Meera Investments Misc. Application No. 747 of 2002** and **Mugoya Construction and Engineering Ltd v Central Electricals International Limited Misc. Application No. 699 of 2011** where the provisions of Order 3 rule and 2 of the CPR were reiterated.

Counsel for the defendant submitted that a power of attorney should have been given for the suit to be commenced and that the suit should have been commenced in the name of the principal and not the agent. Relying on Order 7 rule 14 of the CPR and the authority of **Johan Sebataana v Abanenamar Yorokam Civil Suit No. 99 of 2005**, it was argued for the defendant that the power of attorney should have been produced in court and filed together with the plaint as without it the attorneys would have no authority to sue the defendant.

This court was asked to follow the above decisions since PW1 confirmed that no power of attorney was given to the plaintiff and thus none was attached to the plaint.

Based on the evidence of PW3 that Exhibit P6 was not registered and is a private document, it was argued further that it lacked the basic legal quality to confer rights to sue because it was neither signed as a deed, attested to nor registered, a process that a power of attorney must go through. According to counsel for the defendant the parties are mandated to follow the law regardless of what they may privately agree.

Counsel cited the case of **Mrs. Tereza Beatrice Nalumaga Nyaika v Prince Patrick Olimi Kaboyo C.S No. DR MFP 12/90** where the court rejected a document that purported to be a power of attorney as not conferring authority to an attorney to conduct a case on another's behalf because the instrument was not in the form of deed poll, was never attested, sealed nor registered with the registrar of documents.

It was also submitted that local law would supersede the provisions of the contract although no authority was cited for that argument.

Counsel for the defendant also took the view that section 58(d) of the Copyright and Neighboring Rights Act 2006 (hereinafter called the Act) does not give powers to substitute the name of the plaintiff nor does it amend the rules as to who can sue or who has locus to sue.

Counsel for the defendant argued that the case of **Performing Rights Society Ltd v Grand Theatres Ltd and another (supra)** was distinguishable and is irrelevant in establishing whether the plaintiff has a right to bring this suit as it concerns the legal effect of Deeds of Assignment.

Counsel for the plaintiff submitted in rejoinder basing on PW1's testimony that the plaintiff was not an agent and was acting within the obligations it assumed under the reciprocal agreement to enforce the rights of the PRS (UK).

It was submitted further and rightly so in my view, that there is no legal requirement for registration of reciprocal agreement under the Act thus its non registration has no bearing on its validity.

Counsel for the plaintiff also argued that reciprocal agreements as laid down in section 58(d) of the Act enable the management and enforcement of rights in foreign jurisdictions. He also added that section 58(i) permits the plaintiff to do any act necessary in relation to the copyright and neighboring rights.

The plaintiff's counsel reiterated the argument that the relevant provision under which the plaintiff took legal proceedings to enforce the rights of the PRS (UK) was article 2(1) (c) of Exhibit P6.

I do not agree with the submission of the defendant that the plaintiff required a power of attorney to bring this suit. That submission was misconceived as it was based on the assumption that the plaintiff was suing as an agent of PRS (UK). The plaintiff did not claim to bring the suit as an attorney of PRS (UK). While it is true that rule 2 (a) of Order 3 requires a recognized agent to be a person holding power of attorney authorizing him or her to make appearances and applications, that rule is not applicable in this case. It was the plaintiff's case as pleaded and as submitted by its counsel that it did not sue as an agent of PRS (UK) but rather in its own right as a collecting society with a statutory mandate and contractual obligation to collect royalties in Uganda on behalf of PRS (UK) under the contract of reciprocal representation between the two collecting societies. This contention was supported by a copy of the contract of reciprocal representation (Exhibit P6).

The question is therefore whether that contract clothed the plaintiff with sufficient authority to bring this action in its name. This question can only be properly answered if one appreciates the background of the relationship between the plaintiff and PRS (UK) as collecting societies and how they operate. The rationale for assignment of copyrights by the owners to collecting society was explained by PW2 Ms. Karen Fishman, the Senior Corporate Counsel for PRS (UK) in her evidence. When she was asked how they enforce the rights of their members outside the UK, she stated that when their members join the society they are required to assign/transfer their performing rights in their copy rights work

throughout the world to PRS (UK). As a result of the world wide assignment PRS (UK) becomes the owner of the performing rights so far as that right subsists.

She then explained that their members benefit from this arrangement because they would no longer be concerned with ensuring that anyone who wishes to perform their works has attained a license from them. Furthermore, that it would be impossible for the individual copyright owners to monitor the performance of their works whether in the UK or elsewhere as well as collect royalties. That is why they assign their rights to collecting societies that have the resources to enforce it on their behalf.

That explanation is in line with the observation of Kimaru, J of the High Court of Kenya, Milinani Commercial Court in the case of **Cellutant Kenya Ltd v Music Copyright Society of Kenya Ltd [2009] eKLR** to the effect that:-

*"The necessity of a Copyright Collecting Society such as the defendant is imperative on account of the fact that such society has the expertise and means of monitoring copyright users for purposes of assessing royalties that is required to be paid to the individual copyright owners. It would be impossible for an individual artist, like in the instant case relating to music, to monitor the various media that exploit the copyrights of such artists to determine the level of royalty that should or ought to be paid".*

PW2 further testified that when it comes to administering such rights outside the UK, for example in Uganda, PRS (UK) would enter into an agreement with the collecting society in that country which in this case is the plaintiff. She explained that under that agreement permission is given to the collecting society to enforce those rights, for example, by licensing, collecting royalties and where necessary taking proceedings for infringement of the rights. She added that in Uganda the plaintiff has exclusive rights to enforce those rights and it includes taking proceedings in its own names.

On cross-examination, she conceded that according to article 2 (1) (c) of the contract for reciprocal representation (Exhibit P6), the arrangement was subject to

local legislation and if such local legislation required some steps to be taken before proceedings it should be complied with. She also confirmed that under article 4 of the Deeds of Assignment PRS (UK) could go back to a member who had assigned his rights to obtain a document such as deeds and power of attorney before enforcing the rights.

With the above background in mind, I have had the opportunity to look at the Deeds of Assignment executed by some of the UB40 members admitted in evidence as exhibits P1 (i)-(viii). I will first look at the effect of the assignments to PRS (UK) by the individual UB40 members for purposes of determining whether PRS (UK) was the owner of the copyrights in dispute which it could confer on the plaintiff. That would necessitate defining the word "assign".

Black's Law Dictionary defines the verb "assign" as: "*To convey; to transfer rights or property*". Meanwhile assignee is defined as "*one to whom property rights or power is transferred*". The author however cautions that use of the term is so wide spread that it is difficult to ascribe positive meaning to it with any specificity. He then stated that courts recognize the protean nature of the term and are therefore often forced to look to the intent of the assignor and assignee in making the assignment rather than to the formality of using the term assignee in defining rights and responsibilities.

In view of the above definitions and caution, this court has to determine the intent of the parties as expressed in the Deeds of Assignment. I must observe at this point that apart from the names of the assignor, the content of all the Deeds of Assignment are the same.

Clause 2 of the Deeds of Assignment provides that:-

*"The assignor hereby assigns to the society ALL the under-mentioned rights in musical works which now belong to or shall hereafter be acquired by or be or become vested in the assignor during the continuance of the Assignor's membership of the Society, and all such parts or shares (whether limited as to time, place, mode of enjoyment or otherwise) of, and all such interest in, any such*



*rights as so belong to or shall so be required by or be or become vested in the Assignor (all which rights hereby assigned or expressed or intended to be assigned are herein after collectively referred to as "the rights assigned), TO HOLD the same unto the Society for its exclusive benefit during such time as the rights assigned continue to subsist and (in accordance with the provisions of the Articles of association of the Society for the time being in force) remain vested in or controlled by the Society.*

*The rights assigned to the Society by this Deed are:-*

- (i) all their performing rights, and*
- (ii) all film synchronization rights (subject to the undertaking by the Society to assign or license this right in accordance with the terms of the proviso to article 7 (b) of the Society's Articles of Association), for all parts of the world" (emphasis added).*

From the above provisions of the Deeds of Assignment it is indeed true that those members assigned all their performing rights, and all film synchronization rights for all parts of the world to PRS (UK). In the premises, PRS (UK) became the owner of those assigned rights with power to enforce them. Contrary to what was argued for the defendant, there was no residual right left for the assignor to exercise except where upon request by any of them PRS (UK) specifically assigned the right as provided for under article 7 of the Article of Association of PRS (UK) admitted in evidence as Exhibit P10.

The next question would then be whether PRS (UK) could confer the power to enforce those rights to another collecting society. The evidence of PW 2 already summarised above is quite helpful in answering this question. I wish to observe that it is indeed an internationally recognized practice for collecting societies to enter into contracts for reciprocal representation so as to mutually protect the interest of their members in their respective territories. It is part of the global effort to ensure enforcement of intellectual property rights. This is well articulated in the preamble to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement) referred to in Part II of the Second Schedule to the Act to which Uganda is a signatory.