THE REPUBLIC OF UGANDA

THE TRADEMARKS ACT, CAP 225

IN THE MATTER OF TRADEMARK NO. UG/T/2024/083881 "V8 LUBOGO" IN CLASS 32 IN THE NAME OF PETER NJAWUZI

AND

IN THE MATTER OF AN OPPOSITION THERETO BY THE CAMPBELL'S COMPANY

CAMPBELL'S COMPANY ……OPPONENT

VS

PETER NJAWUZI …… APPLICANT

RULING

Before: Kukunda Lynette Africa, Asst. Registrar of Trademarks

Background:

1. On 18th July, 2024 Mr. Peter Njawuzi (hereinafter the Applicant) applied for registration of the mark "V8 LUBOGO" in class 32 in respect of Beers. The application was examined and the notice was thereafter published in the Uganda Gazette on 16th August, 2024.

2. On 2nd December, 2024 Campbell's Company, a company incorporated in the United States of America (hereinafter the Opponent) filed a notice of opposition against the registration of the Applicant's mark on grounds that it was contrary to sections 23, 25, 9 and 44 of the Trademarks Act Cap 225. The notice of opposition was thereafter transmitted to the Applicant on 17th January, 2025 wherein he had 42 days to respond to the opposition by filing a counterstatement.

3. The Applicant filed his counterstatement on 17th March, 2025 and in the said counterstatement, he raised preliminary objections as to the validity and legality of the notice of opposition, particularly that the Opponent had not provided the powers of attorney as required by law.

4. On the other hand, on 7th April 2025 the Opponent filed a letter to the Registrar requesting for the Applicant's application to be deemed abandoned in accordance with Section 12 (3) of the Trademarks Act, Cap 225 on grounds that the Applicant had filed their counterstatement way beyond the statutory 42 days as required.

5. Consequently, the proceedings reached an impasse, with the Opponent seeking to have the trademark application deemed abandoned on account of the Applicant's late filing, while the Applicant, in turn, challenged the validity of the opposition proceedings on the ground that the Opponent had failed to file a power of attorney with the notice of opposition.

6. A hearing was thus held on 7th May, 2025 wherein the Opponent was represented by Counsel Kajubi Brian of MMAKS Advocates and the Applicant was represented by Counsel Abel Bainomugisha. However, throughout the preceding and subsequent process the Applicant, Mr. Peter Njawuzi, largely represented himself.

7. At the hearing, both parties raised their respective preliminary objections and the following issues were agreed upon:

    i. Whether an opposition can proceed in the absence of a duly executed power of attorney?

    ii. Whether the Applicant’s counterstatement should be admitted out of time?

Determination of Issues:

Issue one: Whether an opposition can proceed in the absence of a duly executed power of attorney?

8. The Opponent contends that its opposition is valid and should not be dismissed simply because the form of authorization was filed late as the document is merely a procedural formality and its delayed submission does not attract any penal sanction under the law. Counsel for the Opponent argues that while Section 93 of the Trademarks Act and Regulation 10(2) allow for the appointment of an agent, the use of the word "may" indicates that filing the form is directory rather than mandatory, and that the regulations do not prescribe specific timelines or consequences for late filing. Furthermore, the Opponent emphasizes that the omission was an inadvertent mistake by their counsel, who honestly believed the document had been properly filed. Counsel argues that such errors by legal representatives should not be visited upon the client, as doing so would elevate a technicality above the pursuit of substantive justice. Since the core notice and grounds of opposition were filed within the statutory timelines and the Registrar was explicitly informed at the time of filing that the authorization form would "follow", the Opponent maintains that the late

submission of this document has no bearing on the merits of the case and should not hinder the progress of the opposition.

9. The Applicant submitted that the Registrar considers the arguments presented in his counterstatement, which are that the Opponent did not attach the registration certificates of their marks on which they are claiming proprietorship and the basis of filing the opposition and further that there was no Power of Attorney from Campbell's company to MMAKS Advocates to file the opposition. Mr. Njawuzi strongly argues that the lack of authorization means there is no validly filed opposition.

10. These rival positions make it necessary, before all else, to examine the statutory architecture governing agency in trademark proceedings. The principle of agency is a legal relationship first developed through the common law. In Uganda, it finds primary statutory expression under Section 117 of the Contracts Act Cap. 284 which defines an "agent" as a *person employed by a principal to do any act for that principal or to represent the principal in dealing with a third person.*

11. Under the Trademarks Act Cap 225, Section 93 provides for agency and states as follows;

> *Where under this Act an act is to be done by or to a person in connection with a trademark or proposed trademark* ***or a procedure relating to the trademark****,* ***the act may under and in accordance with the regulations, be done by or to an agent of that person duly authorized in the prescribed manner****. [emphasis mine]*

12. To fully understand what the law means by this, it is necessary to apply the principles of statutory interpretation. Traditionally, four principal rules guide statutory interpretation, namely the literal rule, the golden rule, the mischief rule, and the *ejusdem generis* rule. Over time, the courts have developed a more integrated method of interpretation, commonly referred to as the purposive approach. The purposive approach does not displace or compete with the traditional rules, rather it harmonizes and applies them as necessary in a given case. Its central aim is to ascertain the intention of the legislature as expressed in the statutory language. Where the wording of a statute is clear and unambiguous, and the court is able to attribute a definite meaning to it, the literal rule is applied and no further inquiry is required. However, where the language

is imprecise, ambiguous, or capable of more than one interpretation, the court will adopt a liberal and purposive construction so as to give effect to the underlying legislative intent. **(National Social Security Fund v Uganda Revenue Authority (Civil Appeal No. 29 of 2020) [2020] UGCommC 139)**

13. The primary and often most emphasized rule of interpretation is the literal rule. According to this rule, words should be understood based on their plain, ordinary meaning, without considering external factors such as context, symbolism, intent, or purpose. Under the literal rule, the court's role is to determine the meaning of the words in their common, everyday sense, rather than applying specialized or technical interpretations.

14. In the case of ***Uganda Revenue Authority vs Siraje Hassan Kajura & Others, SCCA No. 9 of 2015***, the Supreme Court stated that:

> *The principle propounded in the above case is the literal rule which is to the effect that when words of a statute are clear and unambiguous, they should be given their plain meaning and that Courts should not read into the Sections of a taxing statute words that are not there so as to meet the minds of the legislators…* ***In other words, the fundamental role of the Court is to give force and life to the interpretation of a statute having regard to the language of the statute and the particular facts of the case****.[emphasis mine]*

15. In my view therefore, when applying the rules of statutory interpretation, the first point of call is the literal rule provided its application does not lead to absurdity. I will therefore employ the plain and ordinary meaning of the above provisions.

16. The phrase *"in a prescribed manner"* is of significant importance in the present circumstances. The **Black's Law Dictionary (9th Edition, West, 2009) at page 1302** defines the word 'prescribe' to mean "*To dictate, ordain, or direct; to establish authoritatively (as a rule or guideline)."*

17. From the definition provided, it is evident that the phrase "*in a prescribed manner"* denotes that an agent derives authority to act on behalf of a party strictly in accordance with a procedure laid down under written law. It follows, therefore, that an agent cannot unilaterally determine the manner in which such authority is obtained for purposes of representation in trademark

proceedings, but must adhere to the procedure expressly provided for under the applicable statutory framework.

18. Having established what Section 93 demands in principle, it is necessary to read it together with the remaining provisions that give it operative effect. Regulation 2 of the Trademarks Regulations defines an "agent" as an *Advocate of the High Court of Uganda registered by the Registrar as required by Regulation 11.* This means that only a person who is an Advocate of the High Court of Uganda can register themselves as a trademark agent.

19. Further, Section 94 of the Trademarks Act requires that foreign applicants provide an address of service. Section 94 states as follows:

> *Where an applicant for the registration of a trademark or an agent* ***does not reside or carry on business in Uganda he or she shall give the Registrar an address for service in Uganda*** *and if he or she fails to do so the Registrar may refuse to proceed with the application until the address has been given. [emphasis mine]*

20. Section 94 is then re-emphasized by Regulation 9 of the Trademark Regulations, 2023 which further provides that:

> *The Registrar* ***shall require an applicant, opponent or trademark agent,*** *or a* ***registered proprietor or registered user of a trademark****,* ***who does not reside or carry on business within Uganda to give an address for service within Uganda****, and that address shall be treated as the actual address of that person for all purposes connected with the matter in question.[emphasis mine]*

21. Drawing from the above, and employing the plain and ordinary meaning of the words, it is evident that Regulation 9 deals solely with the address for service and is procedural in nature. It does not confer authority to act and therefore cannot cure or replace the requirement for authorization. Furthermore, when one reads Regulation 2 together with Regulation 9, it is clear that a foreign applicant or opponent is required to acquire the services of a trademark agent (an Advocate of the High Court) who shall then serve as its address of service for all intents and purposes of trademark filings or applications within Uganda.

22. Thereafter, Regulation 10 of the Trademark Regulations becomes quite significant. It provides as follows:

(1) Except as otherwise required by these Regulations—

(a) ***an application, request or notice which is required or permitted by the Act or these Regulations to be made or given to the Registrar or the court;***

b) all other communications other than the communication referred to in (a) between an applicant or a person making the request or giving the notice and the Registrar, or the court; and

(c) all communications between the registered proprietor or a registered user of a trademark and the Registrar or the court or any other persons, ***may be signed, made or given by or through a trademark agent.***

(2) An applicant, a person making a ***request or giving a notice, a proprietor, or a registered user****,* ***may appoint a trademark agent to act for him*** *or her in any proceeding or matter before or affecting the Registrar or the court under the Act and these Regulations* ***by signing and sending to the Registrar or the court as the case may be an authority to that effect in Form TM 2 or in such other written form as the Registrar or the court may consider sufficient.*** *[emphasis mine]*

23. Section 93, as construed above, conditions the use of an agent on *"due authorization in the prescribed manner,"* and Regulation 10 (2) identifies two permissible modes of authorisation i.e Form TM 2 (Form of authorisation of Agent in a matter under the Act), or *"such other written form as the Registrar or the court may consider sufficient."*

24. Form TM2 is self explanatory, as it is the statutory form one can use for providing authorization to an agent. The question that arises is what amounts to such other written form. In my view, such other sufficient written form would be an instrument by which a party signs and sends to the Registrar a clear authority empowering a trademark agent to act on that party's behalf in proceedings before the Registrar or the court, such as a power of attorney.

25. In **Fredrick J.K. Zaabwe v Orient Bank Ltd and Others (Civil Appeal 4 of 2006) [2007] UGSC 21,** it was stated that; "BLACK'S LAW DICTIONARY defines "power of attorney" as "*an instrument in writing whereby one person, as principal,* ***appoints another as his agent and confers authority to***

perform certain specified acts or kinds of act on behalf of principal *…….an instrument authorizing another to act as one's agent or attorney……such power may be either general (full) or special (limited)." [emphasis mine]*

26. By its nature as a prescribed statutory form, Form TM 2 is necessarily short and standardized, and does not always accommodate the fuller or more particular terms of authority that parties, particularly foreign applicants, corporate proprietors, or parties involved in more complex proceedings, may wish to grant to their agents. It is for this reason that Regulation 10(2) does not confine appointment of a trademark agent to Form TM 2 alone, but permits appointment *"in such other written form as the Registrar or the court may consider sufficient."* I find that this alternative is does accommodate a power of attorney drawn up independently by or on behalf of the appointing party, that is, an instrument that is not in the prescribed statutory format, but which performs the same essential function as Form TM2, a signed written authority identifying the appointing party, the agent appointed, and the scope of the authority granted. It follows that a duly executed power of attorney is capable of satisfying the requirements of Regulation 10(2) of the Trademarks Regulations, 2023.

27. When all these provisions are read together, they establish a clear and coherent statutory framework governing representation by trademark agents in proceedings under the Trademarks Act. Section 93 permits acts required under the Act to be performed by or through an agent, but expressly qualifies that permission by requiring the agent to be *"duly authorized in the prescribed manner."* The phrase *"prescribed manner"*, as already discussed, is significant because it makes clear that an agent's authority is not presumed but must be conferred in accordance with the law. Regulation 10(2) then gives practical effect to this requirement by providing that such authority shall be granted through Form TM 2 or such other written form as the Registrar or the court may consider sufficient.

28. Regulation 2 simply defines and identifies who may qualify as a trademark agent, but it does not of itself, confer authority to act on behalf of a party. Likewise, Regulation 9 is confined to the procedural requirement of providing an address for service and cannot substitute for, or dispense with, the requirement for proper authorization. Rather, it is Regulation 10 that governs

representation before the Registrar. While Regulation 10(1) permits applications, notices and other communications to be made by or through a trademark agent, Regulation 10(2) prescribes the manner in which that authority must be created. The combined effect of these provisions is that although representation by an agent is optional, once a party elects to act through an agent, proof of authority becomes mandatory through the procedure prescribed by law. This requirement assumes particular significance where the party is a foreign applicant or opponent, since Sections 93 and 94 of the Trademarks Act, read together with Regulation 9, require such parties to act through a duly authorized trademark agent.

29. In my view, it is quite clear that the provisions of the Trademarks Act Cap 225 and Trademark Regulations, 2023 respectively, make it mandatory to file a form of authorization of agent when applications, notices etc are filed by agents. Regulation 10 (2) indicates that the giving of notice and signing as well as sending the authority of the appointed agent go hand in hand and one cannot be done without the other.

30. Counsel for the Opponent has submitted that the mistakes or errors of counsel should not be visited onto an innocent client. He cites the case of **Banco Arabe Espanol Vs. Bank of Uganda, SCCA No. 8 of 1998** where it was held that;

> *"A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits."*

31. The principle that a litigant should not ordinarily suffer for the mistakes of counsel is well established. However, it cannot assist the Opponent in the present circumstances. The defect before me today is not a mere procedural irregularity capable of being overlooked or cured through judicial indulgence, rather, it strikes at the very foundation of the proceedings. Where a notice of opposition is filed without the authorization of the purported opponent, the issue ceases to be one of counsel's inadvertence and instead raises the fundamental question of whether the party invoking the Registrar's jurisdiction possessed the requisite *locus standi* to do so.

32. In **Chen Jianwen & 2 Ors vs. Bang Cheng Investment Co. Ltd & 3 Ors (Miscellaneous Application No. 0530 of 2023) (Arising from Civil Suit No. 0033 of 2022)** Justice Stephen Mubiru stated that;

> *"The term locus standi literally means a place of standing. It* ***means a right to appear in court, and, conversely, to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding*** *(see Njau and others v. City Council of Nairobi [1976–1985] 1 EA 397 at 407).* ***To say that a person has no locus standi means the person cannot be heard, even on whether or not he has a case worth listening to."*** *[emphasis mine]*

33. As was emphasized by Justice Bashaija in **Fakrudin Kapasi & Anor v Kampala District Land Board & Anor (Civil Suit No. 570 of 2015) [2016] UGHCLD 54** that;

> "…*there is an unfailing requirement that locus standi to institute* ***a suit by whatever prescribed mode must be established at the time the suit is filed, that this locus is legally conferred and must be expressly established at the time when the plaint is filed by attaching proof of it filed with the plaint*** *and this is intended to enable the court and defendant know with clarity the basis of the plaintiff's authority to bring a suit and an omission to file with the plaint such authority renders the plaint fatally defective.*" [emphasis mine]

He further held that:

> *"They* ***cannot relate back to confer the lacking locus standi retrospectively on the plaintiffs to institute the suit at the time they did****. At the risk of repetition****, the settled position is that locus standi must exist at the time when the plaint is filed not subsequently****. Needless to state, that locus standi is what gives the basis for any subsequent pleadings by a plaintiff not vice versa. As was held in Fenekasi Kiwanuka case (supra)* ***instituting a case without locus standi against a defendant is illegal and the plaintiff would have no remedy under the law"****. [emphasis mine]*

34. The above is similar to the present matter as at the time of filing the notice of opposition, the opponent filed it through an agent who had no signed authority to represent them. The inclusion of the words “authority to follow” in the notice of opposition does not, in my view, cure the absence of written authority at the time of filing. If anything, those words indicate that the requisite authority had not been filed together with the notice of opposition. As the authorities cited above demonstrate, where authority is required to institute proceedings, it must exist at the material time and cannot be conferred retrospectively.

35. Further, Form TM 2 of the Second Schedule of the Trademark Regulations, 2023 provides that part (b) of the form should be filled with such details as quoted, ***“Here state the particular matter or proceeding for which the agent is appointed giving the reference number of business”.*** Surely, it could not have been the intention of the law makers to provide for inclusion of the purpose of the appointment of an agent, if the authority could be granted and filed after the purpose for its grant is done.

36. Courts have on a number of occasions relied on statutory forms to establish the intention of the lawmakers and object of the provisions. In the cases of **Patrick Kato vs Dirk Ten Brink4 and Pinnacle Projects Vs Business in Motion Consultants HCMA No. 362 of 2010** where Justice Hellen Obura stated that;

> *“With respect, I disagree with counsel on this point and I do not find the relevance of O.51 r.8 since the summons in Form 4 of Appendix A of the CPR that was served on the applicant on 26th May, 2010 clearly stated that: “You are required within ten days from the date of service of this summons to apply for leave from the court to appear and defend this suit.” The number of days when it starts running were clearly stated in the summons and therefore there is no need to be guided by O.51 r. 8 which clearly states the instances when it is applied.”*

37. In the above case court emphasized that Form 4 of Appendix A to the Civil Procedure Rules provides that a defendant to a Specially Endorsed Plaint has 10 days from the date of service of the summons to file an application for leave to appear and defend and this is because Order 36 of the Civil Procedure Rules does not provide for the time line in which to file for leave but the summons in Form 4 provide the 10 days within which to reply to the summons.

38. Similarly, drawing from the above case and the statements in Form TM 2, it could not have been the intention of the lawmakers to require an agent to state the specific matter for which authority is granted, if that authority could lawfully be granted and filed only after the matter for which it was needed had already been transacted.

39. Additionally, based on the above provisions, it is evident that the use of the word "may" in Regulation 10 (2) does not mean Form TM2 is optional in the sense of dispensable, rather it indicates that a party has the option to choose whether or not to appoint an agent. If a party files an opposition personally, no TM 2 is required. However, where an opposition is filed by or through a trademark agent, the combined effect of Section 93 and Regulation 10(2) is that the agent must be able to demonstrate that they are duly authorized, and the prescribed method of doing so is through Form TM2 (form of authorization of agent) or another written authority accepted by the Registrar.

40. Accordingly, an opposition filed by a trademark agent without TM2 (form of authorization of agent) or an equivalent written authority is defective for want of authority, and is not merely a procedural irregularity. Such a defect goes to the agent's authority and capacity to institute the opposition on behalf of the Opponent, and a substantive question therefore arises as to the validity of the proceedings commenced by that agent.

41. **In MacFoy v United Africa Co Ltd [1961] 3 All ER 1169 (PC) at 1172I** Lord Denning stated that:

> *"If an act is void, then it is in law a nullity**. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.**" [emphasis mine]*

42. It might be asked whether this conclusion elevates technicality over substance, contrary to the constitutional command to do substantive justice. It does not. Article 126(2)(e) of the Constitution of Uganda, 1995 is only available to prevent procedure from blocking the administration of substantive justice. It is not a device for dispensing with matters of substantive law. See

Mulindwa vs Kisubika S.C.C.A NO12 of 2014, which reiterated the decision in the case of **Kasirye Byaruhanga & Co. Advocates v Uganda Development Bank, SC Civil Application No. 2/97** where it was held that:

> *"...a litigant who relies on the provisions of Article 126 (2) (e) of the Constitution must satisfy the Court that in the circumstances of a particular case before the Court it was not desirable to pay undue regard to the relevant technicality.* ***Article 126 (2) (e) is not a magic wand in the hands of defaulting litigants."*** *[emphasis mine]*

43. In a similar application in **Horizon Coaches vs. Edward Rurangaranga and Mbarara Municipal Council SCCA No. 18/2009** (unreported), Katureebe JSC, as he then was, held as follows:

> *"Article 126 (2) (e) of the Constitution enjoins Courts to do substantive justice without undue regard to technicalities.* ***This does not mean that courts should not have regard to technicalities****. But where the effect of adherence to technicalities may have the effect of denying a party substantive justice, the Court should endeavor to invoke that provision of the Constitution. "*

44. The want of authority in this case is not a technicality of the kind Article 126(2)(e) was designed to overlook, it is a defect going to the agent's very standing to act and file the opposition on behalf of the Opponent, and is therefore a matter of substance rather than form.

45. The manner in which the Opponent's agent subsequently sought to remedy the omission further reinforces this conclusion. Once a matter has proceeded to hearing, the proceedings and the record are subject to the control of the Court or tribunal, and a party is not at liberty to unilaterally introduce further substantive documents or evidence without first seeking and obtaining leave. In **Surgipharm (U) Limited v Uganda Investment Authority and Another (Miscellaneous Cause No. 65 of 2021) [2022] UGHCCD 89,** the Court recognised that the introduction of further material after hearing requires the sanction of the Court. This procedure ensures that the opposing party is afforded notice and an opportunity to respond and thereby safeguards the right to a fair hearing. (**See also Total Marketing Uganda Limited v Jinja District Land Board & 4 Others (HCT-03-CV-CS 15 of 2017) [2024] UGHC**

947 and Ndyareeba v Arinaitwe (Miscellaneous Application No. 173 of 2019) [2022].

46. In the present case, the hearing was held on 7th May, 2025, during which the preliminary objection concerning the agent's authorization was raised, the issues for determination were agreed upon, and timelines for submissions were set. Notwithstanding this, several hours after the hearing had concluded, Counsel for the Opponent filed the Form TM2 (Form of Authorization of Agent) without first seeking or obtaining leave from the Registrar. In my view, that was not the proper procedure for introducing the document onto the record, particularly where its very absence formed the subject of a preliminary objection already argued before the Registrar. If the agent wished to introduce the document at that stage, the proper course was to seek leave of the Registrar, thereby affording the Applicant an opportunity to address the proposed filing.

47. There is a further and more fundamental difficulty with the subsequently filed Form of authorization of agent. The document is dated 3rd December, 2024 whereas the record indicates that the notice of opposition was filed on 2nd December, 2024. It therefore post-dates the very act which it is relied upon to authorize. Consequently, even if I were to overlook the manner in which the document was introduced and admit it onto the record, it would not establish that the agent had the requisite written authority at the time the Notice of Opposition was filed.

48. I have nevertheless further considered whether, in the interests of substantive justice, these irregularities may be overlooked so as to permit the opposition to proceed on its merits. In my view, they cannot. By the time the Form of Authorization was filed, the absence of authority had already been specifically raised by the Applicant and argued at the hearing as a preliminary objection. Permitting the Opponent to supplement the record thereafter without leave, in answer to an objection already argued would deny the Applicant an equivalent opportunity to challenge the document and the circumstances in which it was filed. Procedural fairness must operate equally between the parties. Article 126(2)(e) cannot therefore be invoked to cure one party's non-compliance where doing so would compromise the other party's right to a fair hearing. **(see Kasirye Byaruhanga & Co. Advocates v. Mugerwa Pius Mugalaasi (Civil Appeal No. 87 of 2008 [2009] UGCA 75)**

49. Furthermore, it would place the Applicant at a procedural disadvantage, and effectively reward the very noncompliance that occasioned the preliminary objection, especially considering the manner and form in which the document was subsequently filed. Again, taken cumulatively, the foregoing matters are not minor procedural lapses which the Registrar may simply overlook. The defect goes to the agent's authority to institute the opposition on behalf of the Opponent and could not be cured by the document subsequently filed.

50. In light of all the above, I find that at the time the notice of opposition was filed, the agent lacked the requisite authorization in the manner prescribed by Section 93 of the Trademarks Act, Cap. 225 and Regulation 10(2) of the Trademarks Regulations, 2023, to institute the proceedings on behalf of the Opponent. Accordingly, the opposition is hereby dismissed.

51. Having established that the opposition was not validly instituted on behalf of the Opponent, issue two no longer falls for determination and I therefore find it unnecessary to consider the same.

52. Each party to bear their own costs.

I so order.

Dated at Kampala this 14th day of September, 2026



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Kukunda Lynette Africa
ASSISTANT REGISTRAR OF TRADEMARKS