

IN THE SUPREME COURT OF MAURITIUS

Before the Honourable Judge in Chambers

In the matter of:

WI5883 -SN 1040/21

CLOUD INNOVATION LTD, a duly registered company under the laws of Seychelles and having its registered office situated at C/O Abacus (Seychelles) Ltd, Mont Fleuri, Mahe, Seychelles

Applicant

v/s

AFRICAN NETWORK INFORMATION CENTRE (AfrINIC) Ltd, a private company limited by guarantee, duly incorporated under the laws of Mauritius and having its registered office situated at 11th Floor, Standard Chartered Tower, 19 Cybercity, Ebene, Mauritius

Respondent

NOTICE IN DENUNCIATION IN ORDER THAT THE RESPONDENT MAY NOT PLEAD OR PRETEND IGNORANCE

TAKE NOTICE, You, the abovenamed Respondent, in order that you may not plead or pretend ignorance of same that an Order in the nature of an interim order in the nature of an injunction has been issued on Tuesday 13 July 2021 by the Honourable Judge in Chambers restraining and prohibiting You, the abovenamed, Respondent acting through its Board and/or its representative and/or prepose in whatever capacity, from

- (i) acting in any manner whatsoever, on its Board Resolution dated the 8th July 2021, which had been taken following the judgment dated 7 July 2021 delivered by Honourable Judge G Jugessur-Manna and subject to an appeal filed on 8th July 2021, which had the effect of terminating the membership of the Applicant in the Respondent with immediate effect;
- (ii) freezing in any manner whatsoever, any or all of the resources allocated to the Applicant;
- (iii) denying the Applicant access in any manner whatsoever to the AFRINIC WHOIS database;

- (iv) reclaiming, in any manner whatsoever, or any or all of the resources allocated to the Applicant by virtue of its membership as Resource Member of the Respondent

TAKE FURTHER NOTICE THAT YOU are herewith served upon you true and certified copies of:

- i) Rule dated 13 July 2021;
- ii) Praecipe dated 13 July 2021; and
- iii) Affidavit dated 13 July 2021 together with all annexures.

WARNING YOU that should you fail to comply with the aforesaid Order, you will be subject to contempt of court proceedings and may be liable to imprisonment.

Under all legal reservations

Dated this 13th day of July 2021



Yantee Hurnaurn-Calcuttea

Appleby, Happy World House, 37, Sir William Newton Street, Port Louis.

Attorney for the Applicant instructing G Glover SC

TO

- 1. AFRICAN NETWORK INFORMATION CENTRE (AfrINIC) Ltd**, service to be effected at its registered office situated at 11th Floor, Standard Chartered Tower, 19 Cybercity, Ebene, Mauritius
- 2. THE BOARD OF DIRECTORS REPRESENTED BY MR EDDY KAYIHURA MABANO**, service to be effected at C/O AFRICAN NETWORK INFORMATION CENTRE (AfrINIC) Ltd, service to be effected at its registered office situated at 11th Floor, Standard Chartered Tower, 19 Cybercity, Ebene, Mauritius
- 3. THE AFRINIC COMMUNITY**

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

Cloud Innovation Ltd

Applicant

v/s

African Network Information Centre (AfrinIC) Ltd

Respondent

*And in the matter of:-
Ex-Parte*

Cloud Innovation Ltd

Applicant

WHEREAS in virtue of a Judge's Order made on the 13th day of July, 2021 before **Honourable A D Narain, Judge**; upon hearing Mrs Attorney Y Hurnaurn-Calcuttea for the Applicant; After taking cognizance of the praecipe and affidavit both dated 13 July 2021 filed in support of the application, together with the documents thereto annexed;

IT IS HEREBY ORDERED that an Interim Order in the nature of an Injunction **BE AND SAME IS ISSUED**, restraining and prohibiting the Respondent, acting through its Board and/or its representative and/or préposé in whatever capacity, from-

- (i) acting, in any manner whatsoever, on its Board Resolution dated 08 July 2021, which had been taken following the judgment dated 07 July 2021 delivered by Hon. G Jugessur-Manna, Judge and subject to an appeal filed on 08 July 2021, which had the effect of terminating the membership of the applicant in the respondent with immediate effect;
- (ii) freezing, in any manner whatsoever, any or all of the resources allocated to the applicant;
- (iii) denying the applicant access, in any manner whatsoever, to the AFRINIC WHOIS database; and
- (iv) reclaiming, in any manner whatsoever, any or all of the resources allocated to the applicant by virtue of its membership as Resource Member of the respondent.



WHEREAS IT IS ALSO ORDERED THAT the above interim order **DO** remain in force until **15th day of July 2021 at 09.30 a.m** when the abovenamed Respondent **IS ORDERED** to appear before the Honourable Judge sitting in Chambers, in Court No. 9, 7th Floor, in the **New Supreme Court Building, Edith Cavell Street, Port Louis** to show cause why the above interim order should not be enlarged, discharged or otherwise dealt with after hearing parties.

WHEREAS IT IS FURTHER ORDERED THAT the above Interim Order in the nature of an Injunction **BE AND SAME IS HEREBY ISSUED** at the **applicant's** own risks and perils, and upon **applicant's** undertaking, through **its** Attorney to abide by any order which the Court or Judge may thereafter make as to damages to the Respondent by the granting of this Interim Order in the nature of an Injunction.

Witness the Honourable A A Caunhye, Chief Justice

Chambers, this 13th day of July 2021



A handwritten signature in black ink, appearing to be "P Choytun".

**P Choytun
Principal Court Officer
For Master and Registrar**

IN THE SUPREME COURT OF MAURITIUS

(APPELLATE JURISDICTION)

BETWEEN

Cloud Innovation Ltd, a duly registered company under the laws of Seychelles and having its registered office situated at c/o Abacus (Seychelles) Ltd, Mont Fleuri, Mahe, Seychelles

APPELLANT

V/S

AND

African Network Information Centre (Afrinic) Ltd having its registered office situated at 11th Floor, Standard Chartered Tower, 19 cybercity, Ebene, Mauritius

RESPONDENT

NOTICE WITH GROUNDS OF APPEAL

TAKE NOTICE that the above-named Appellant having its legal domicile elected in the office of the undersigned attorney at law situate at Appleby, L7, Happy World House, 37, Sir William Newton Street, Port Louis feeling itself aggrieved by and dissatisfied with a final judgment made by Honourable G. Jugessur-Manna on the 07th July 2021 in case SC/COM/WRT/000168/2021, setting aside the application with costs intends to appeal and does hereby appeal to the Supreme Court in the exercise of its appellate jurisdiction, in order to have the said final judgment quashed, reversed, set aside, modified, annulled, amended or otherwise dealt with as the aforesaid Honourable Court may deem fit and proper for the following amongst other reasons, viz:

BECAUSE

In Relation To The Mandat Ad Litem

1. The Learned Judge after having found that it is common ground that Mrs Hurnaurn-Calcuttea is the mandatiare ad litem (l'avouee constituee) such that she has the mandate to initiate the proceedings on the Applicant's behalf erred when she held that it can be safely concluded that the instructing attorney for the Appellant, then Applicant, has transgressed her mandate as "mandatiare ad litem" in the covering affidavit solemnly affirmed by her on the 24th March 2021, by making a summary of the salient issues in support of the application in particular at paragraphs 4(iii) and 4(iv) inasmuch as:-
 - (i) The Learned Judge has herself concluded that paragraph 4 of the covering affidavit was a summary of the issues in support of the application;
 - (ii) The Learned Judge failed to give any consideration to the fact that it was also averred in the covering affidavit at paragraphs 1 and 2 thereof that this covering affidavit was affirmed on instructions received from Applicant and based on documents showed to the instructing attorney. It was further averred by the attorney that those matters were within her own knowledge;
 - (iii) As emphasised at page 6 of the Judgment ; *"L'avoué qui s'est constitué et a conclu pour une partie est présumé avoir reçu de celle-ci pouvoir suffisant pour la représenter et cette présomption s'impose à tous aussi longtemps qu'une manifestation de désaveu n'est intervenue....."*. and in the absence of any such manifestation on record, the attorney had not exceeded her mandate;
 - (iv) The Learned Judge failed to apply the case of **Pristine Seafoods (Pty) Ltd v. Collective Dream Studio (Pty) Ltd & Ors 2018 SCJ 132** where a similar preliminary objection was set aside and where it was held that *"...Mr. G. Van Der Burgh does not confirm that Mr Thandarayen has personal knowledge of the facts expressed in AA1 is not fatal inasmuch as the converse can also be successfully argued viz. that there is no "desaveu" on the part of Mr G. Van Der Burgh of the contents of the affidavit of Mr Thandarayen."* In the present case, it has been stated by the attorney that she has personal knowledge of those averments and her *mandat* conferred upon her the power to lodge the application in chambers and to take *"tous les actes nécessaires pour parvenir au jugement qui doit terminer l'instance"* ;

- (v) The Learned Judge erred in finding that there was no need to dwell on the other points [preliminary objections 3(b) and 9, preliminary objection 5 having been conceded by Counsel for Respondent], having upheld preliminary objection 3(a) inasmuch as, it clear on the basis of **Pristine Seafoods (Pty) Ltd v. Collective Dream Studio (Pty) Ltd & Ors 2018 SCJ 132**, that upholding preliminary objection 3(a) did not warrant the setting aside of the application *in toto* ;
- (vi) The Learned Judge, on a proper interpretation of the principle set out in the case of **Transnet Retirement Fund v RMB Westport GP [2019 SCJ 233]**, failed to appreciate that Attorney for the Appellant, then Applicant, was not giving evidence on behalf of the company but was acting as the *mandataire ad litem* to initiate the proceedings on behalf of the Appellant, then Applicant. A *mandataire ad litem*, namely an attorney at law, is not required to have a Power of Attorney under the Act.
- (vii) The Learned Judge failed to give due and proper consideration to the principle set out in **Seychelles Marketing Board v. Somatrans 1997 SCJ 415** which are applicable in this case.

In Relation To the Deposit of Power of Attorney Act 1928

2. The Learned Judge wrongly interpreted the principle set out in the case of **Transnet Retirement Fund v RMB Westport GP 2019 SCJ 233** and erred in concluding that the letter of authorisation given to Mr Paul Po Hon Lam falls short of a power of attorney as provided in section 2 of the Deposit of Powers of Attorney Act 1928 the moreso when there has never been any delegation of power to Mr Paul Po Hon Lam to represent the Appellant, then Applicant.
3. The Learned Judge erred in concluding that nobody has been duly appointed by the applicant's board of directors to represent it and to give evidence on its behalf in the face of the unchallenged evidence on record that Mr Paul Po Hon Lam was not a delegate of the company but its employee who has been duly authorised by Mr Lu Heung, a director of the company.
4. The Learned Judge erred in concluding that the attorney at law required a power of attorney to represent the Appellant, then Applicant, in compliance with the provisions of the Deposit of Powers of Attorney Act inasmuch as for all intents and purposes , Mrs Hurnaurn-Calcuttea was not acting in the capacity of a delegate of the Appellant but was its *mandataire ad litem* and does not need a power of attorney to act as such.
5. The Learned Judge was wrong to hold that it is apparent that nobody has been duly appointed by the Appellant's, then Applicant's board of directors to represent it and to give evidence on its behalf inasmuch as the letter of authorisation of Mr Lam is evidence to that effect.

Equitable Jurisdiction

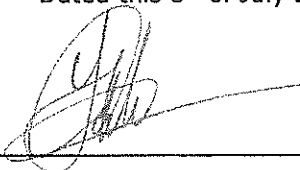
6. The Learned Judge failed to exercise its equitable discretion for an application for urgent relief in exceptional circumstances where the cause of action arose on the very first day the Republic of Mauritius went into a complete lockdown and it was impossible for any litigant to appoint an agent in Mauritius over and above instructing an attorney at law.
7. The Learned Judge failed to exercise its equitable discretion in favour of the Applicant to issue an interlocutory judgement in default of the Respondent by allowing service of process anew upon the Respondent, notwithstanding good and valid service thereof and on the very ground that Mauritius was in a complete lockdown.

And for all the other reasons to be given in due course of the law

TAKE FURTHER NOTICE that should you, the above named Respondent wishes to resist the present appeal, you, the above named Respondent shall not later than two months after service hereof upon you, serve on the above named Appellant and file at the Registry of the above Court, a Notice of your intention so to do.

Under all legal reservations

Dated this 8th of July 2021



MRS. YANTEE HURANURN-CALCUTTEEA

Appleby, L7, Happy World House, 37, Sir William Newton Street, Port Louis

Attornes for the aboved-named Appellant INSTRUCTING Mr. R. Gulbul of Counsel

To:

African Network Information Centre (Afrinic) Ltd service to be effected at its registered office situated at 11th Floor, Standard Chartered Tower, 19 cybercity, Ebene, Mauritius

The Honourable Master and Registrar service to be effected at New Supreme Court House, Edith Cavell Street, Port Louis.