

Record No. SC/COM/JICA/000476/2021

**IN THE SUPREME COURT OF MAURITIUS
(Before the Judge in Chambers of the Commercial Division)**

In the matter of:-

Cloud Innovation Ltd

Applicant

v

African Network Information Centre (AfriNIC) Ltd

Respondent

In the presence of:-

- 1. Mauritius Commercial Bank Ltd**
- 2. SBM Bank (Mauritius) Ltd**

Garnishees

ORDER

After having duly considered the submissions of all Counsel and for the reasons given below I uphold the preliminary objection raised by the respondent to the effect that –

“The Deponent’s power of attorney does not cover either (1) obtaining the Attachment Order issued in SC/COM/JICA/000465/2021 or (2) representing the Applicant for the purpose of the present proceedings SC/COM/JICA/000476/2021”.

I find that in the present matter it is immaterial whether the preliminary objection was raised by the respondent in an affidavit since, *ex-facie* the affidavit of Mr. Dushyant Ramdhur purportedly representing the applicant, the power of attorney granted to Mr. Ramdhur (Annexure 1) in support of both applications - **SC/COM/JICA/000465/2021** and

SC/COM/JICA/000476/2021 shows that Mr Ramdhur had no power to represent the applicant to apply for leave to provisionally attach in the hands of the garnishees monies held by the garnishees in the name of the respondent and to make the present application.

The power of attorney reads as follows –

“The Company hereby nominates, constitutes and appoints Mr Dushyant RAMDHUR (...) to be its lawful attorney with full power and authority in its name and on its behalf to limitatively:

- (a) Affirm, sign, execute and file:
 - (i) Pleadings, including affidavits before the Supreme Court of Mauritius in case bearing reference Cloud Innovation Ltd v/s African Network Information Center (AFRINIC) Ltd [SC/COM/WRT/000168/2021];
 - (ii) Any incidental application and/or main case pursuant to the case referred at (i) above.
(hereinafter referred to as “**the Proceedings**”); and
- (b) To appear and represent the Company during the proceedings.”

I agree with the submission of Counsel for the respondent that the word “limitatively” may only be read as limiting and restricting the powers of representation granted to Mr Ramdhur. The power of attorney given to Mr Ramdhur is very clear and the terms are unambiguous: Mr Ramdhur may only represent the applicant in:

- the case bearing cause number **SC/COM/WRT/000168/2021**
- an application incidental to case cause number **SC/COM/WRT/000168/2021**, and/or
- the main case pursuant to case cause number **SC/COM/WRT/000168/2021**.

The relevant provisions of the law governing the present matter are articles 1984, 1987, 1989 of the Civil Code which read as follows –

“1984 Le mandat ou procuration est un acte par lequel une personne donne à une autre le pouvoir de faire quelque chose pour le mandant et en son nom.”

“1987 Il est ou spécial et pour une affaire ou certaines affaires seulement, ou général et pour toutes les affaires du mandant”

« 1989 Le mandataire ne peut rien faire au-delà de ce qui est porté dans son mandat: le pouvoir de transiger ne renferme pas celui de compromettre. »

The power of attorney granted to Mr Ramdhur constitutes a “*mandat spécial*” which is limited to affirming, signing, executing and filing of pleadings, including affidavits before the Supreme Court of Mauritius in case bearing reference Cloud Innovation Ltd v/s African Network Information Center (AFRINIC) Ltd [SC/COM/WRT/000168/2021] and any incidental application and/or main case pursuant to the case referred as SC/COM/WRT/000168/2021 and to appear and represent the Company during the proceedings.

In view of the clear terms of the power of attorney, Mr. Ramdhur is therefore precluded from representing the applicant in any other case since **« le mandataire ne peut rien faire au-delà de ce qui est porté dans son mandat »** (supra)

It is to be noted that in his affidavit dated 27 July 2021 Mr. Ramdhur averred that the applicant had to seek urgent relief to protect its membership rights in case bearing reference SC/COM/WRT/000168/2021. However, no document has been filed in the present proceedings to show the purport of case cause number SC/COM/WRT/000168/2021. Be that as it may, there is no indication in the power of attorney granted to Mr. Ramdhur that he is allowed to initiate attachment proceedings. I agree with the submission of Counsel for the respondent that an application for authorisation to effect a “*saisie-arrêt*” are neither (i) applications incidental to an Injunction case nor (ii) the main case in respect of the Injunction case. An injunction is a discretionary remedy sought and obtained under the powers of the Judge in Chambers acting in equity whereas a “*saisie-arrêt*” is a legal remedy under the Code de Procédure Civile, and not one requesting the Judge in Chambers to act in equity.

I am of the view that the only interpretation to be given to the terms of the power of attorney is that the applicant did not give the power to Mr. Ramdhur to initiate attachment proceedings.

For the above reasons the present application is set aside. With Costs.

In the circumstances, there is no need to delve into the other preliminary objections raised by the respondent.

Furthermore, since case cause number SC/COM/JICA/000465/2021 is also based on the same power of attorney as in the present proceedings, I have no alternative than to declare that my order, dated 23 July 2021, granting the applicant leave to provisionally attach in the hands of the garnishees monies held by the garnishees in the name of the respondent, is null and void.

I certify as to Counsel.



V. Kwok Yin Siong Yen
Judge

..1.5 October 2021

SC/COM/JICA/000476/2021

IN THE SUPREME COURT OF MAURITIUS
(Commercial Division – In Chambers)

In the matter of:

CLOUD INNOVATION LTD

Applicant/Attaching Party

v

AFRICAN NETWORK INFORMATION CENTRE (AfrinIC) Ltd

In the presence of :

Respondent/Debtor

1. SBM BANK (MAURITIUS) LTD
2. MAURITIUS COMMERCIAL BANK LTD

Garnishees

Minutes of proceedings on 15 October 2021 in Chambers, before Her Ladyship Hon. V Kwok Yin Siong Yen, Judge

Mr G Glover SC, appears for the applicant, instructed by Mrs Attorney Y Hurnaurn-Calcutteea, who is in attendance.

Mr A Moollan SC, appears for the respondent together with Mr B Radhakissoo of Counsel, Miss J Chinien, of Counsel, and Mr K Dondhee, of Counsel, instructed by Mr M Mardemootoo SA, who is in attendance.

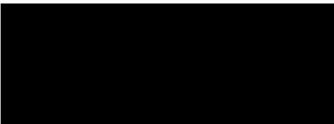
Upon a question from Her Ladyship as to whether they have anything to add over and above their respective written submissions Mr Glover SC replies that he has addressed all the issues raised by the respondent in its preliminary objections and has nothing to add.

Mr Moollan SC states that the written submissions filed by the applicant are not grounded as per the court record and moves that the submissions be disregarded as from paragraph 42. He further states that he has nothing to add to his written submissions.

Her Ladyship informs legal advisers that she has duly considered the written submissions of both legal advisers and her order is ready.

At this stage, the order is read out and filed of record.

For the reasons given in the above order, Her ladyship orders that her order dated 23 July 2021 granting leave to the applicant to provisionally attach in the hands of the garnishees monies held by the garnishees in the name of the respondent in case bearing cause No. SC/COM/JICA/000465/2021, be null and void. She further orders that this application, which is the second step of the attachment proceedings, be set aside, with costs and certifies as to Counsel.


A Ganga Ram (Mrs)

Secretary to Judge