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Godrej case: re-examining the jurisdiction of the Commercial Court

Tanzania, United Republic of - [Bowmans](#)

- Twenty-one years ago, the Commercial Court ruled for the first time in *Kibo Match* that it had jurisdiction to entertain trademark disputes
- In the present case, the court's competence was again questioned by the defendant
- The court dismissed the defendant's argument that the proper forum was the Office of the Chief Inspector of Merchandise Marks

On 27 April 2021 the High Court of Tanzania (Commercial Division) (the 'Commercial Court'), in [Godrej Consume Products Limited v Target International \(T\) Limited](#) (Commercial Case No 60/2019), once again re-affirmed its own competence to entertain trademark cases. This decision comes 21 years after the decision in *Kibo Match Group Limited v Mohamed Enterprises (T) Limited* (Civil Case No 6/1999 (unreported)), in which the Commercial Court's jurisdiction to entertain trademark disputes was questioned for the first time.

The *Kibo Match* case

The *Kibo Match* case was instituted shortly after the establishment of the Commercial Court, which was established with the objective of trying commercial cases. The plaintiff instituted a suit against the defendant, alleging infringement of its KANGAROO trademark. The defendant raised an objection that the Commercial Court had no jurisdiction to entertain such a dispute since the procedural rules in force at the time did not encompass trademarks in the list of actions constituting a "commercial case". The judge held that trademark disputes ought to be categorised among the commercial disputes that the Commercial Court was established to entertain and overruled the preliminary objection.

The *Godrej* case

The *Godrej* case, 21 years later, again brought this question to the fore. The defendant was being sued for passing off and infringement of the plaintiff's trademark for importing and distributing on the Tanzanian market counterfeit goods which were identical in all particulars to those manufactured and distributed by the plaintiff. A preliminary objection on a point of law was raised by the defendant, which argued, among other things, that the Commercial Court was not the proper forum to entertain a suit which was primarily founded on allegations of counterfeiting.

The defendant's objection was based on the ground that there is a specific forum established by law to deal with matters relating to counterfeiting issues, and that such forum is the Office of the Chief Inspector of Merchandise Marks in accordance with the Merchandise Marks Act and its supporting regulations.

The defendant simply submitted that, as there is a specific forum, it was wrong for the plaintiff to institute the suit before the Commercial Court. In response, the plaintiff relied on the ruling in the *Kibo Match* case and submitted that the Commercial Court had already settled the question of its own jurisdiction to entertain trademark disputes. The plaintiff argued that the forum of the Office of the Chief Inspector of Merchandise Marks caters for matters which are criminal in nature with criminal consequences, which are quite distinct from the remedies sought before the Commercial Court (ie, civil remedies). This meant that the Commercial Court was not excluded from entertaining trademark disputes for civil remedies in matters in which the Chief Inspector would also have jurisdiction for purposes of obtaining criminal consequences.

Decision

The judge agreed with the plaintiff's arguments and confirmed that, based on the Procedural Rules of the Commercial Court, that court is "indisputably conferred with the jurisdiction to entertain civil remedies emanating from infringement and passing-off claims".

Comment

This is an important decision which serves to clarify the distinctions between the role played by the Commercial Court and that played by the Office of the Chief Inspector of Merchandise Marks. It is hoped that the *Godrej* case will now have settled the question of the jurisdiction of the Commercial Court in trademark disputes.

Francis Kamuzora

Bowmans

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