

FIJI VIDEO LIBRARY ASSOCIATION v ATTORNEY GENERAL & MINISTER  
OF JUSTICE, COMMISSIONER OF POLICE,  
SOUTH PACIFIC RECORDING LIMITED

a

High Court Civil Jurisdiction  
Fatiaki, J  
30 August, 2000  
HBC 0310/00

b

*Extension or dissolution of interim injunction — Copyright Act 1999 s30(2)(c),  
Legal Notice 143/99, Constitution 1997 ss26, 29, 38, 40 and 44, Fair Trading  
Decree 1992, High Court Rules 1988 O.15 r. 14(3) State Proceedings Act (Cap.24)  
s15*

The plaintiff obtained an injunction on oral application against the defendants to  
restrain them from entering or removing anything from shops belonging to members  
of the association.

c

**Held** — Absence of legal personality has particular significance having regard to  
nature of declarations sought and to ability of plaintiff association to  
furnish an enforceable undertaking in damages where interlocutory  
injunction is sought thus plaintiff has no locus standi under O.15 r.14(3)  
to issue originating summons.

d

Application to extend and continue injunction refused and injunction dissolved  
forthwith.

**Cases referred to in judgment**

*Cons American Cynamid Co. v Ethicon* (1975) 1 All ER 504  
*Appl Factortame Ltd. v Secretary of State for Transport* (1989) 2 All E.R.692  
*Dist Factortame Ltd. v Secretary of State* (No. 2) (1991) 1 All ER 70  
*Foll M & M Civil Engineering Pty. Ltd. v SCTC* (1987) 2 Qd R.401  
*Foll Bates v Lord Hailsham of St. Marylebone* (1972) 1 W.L.R.1373  
*Foll Low v Earthquake & War Damage Commission* (1959) N.Z.L.R.1198  
*Appl O'Reilly v Mackman* (1982) 3 W.L.R.1096  
*Cons Crystal Clear Video v A.G. and Commissioner of Police* Suva Civil  
Action No. 331 of 1988  
*Appl F. Hoffman - La Roche v Secretary of State* (1974) 2 ll E.R.1128  
*Foll Robert Tweedle McCahill v R.* F.C.A Cr.App.No.96 of 1982

e

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Kelemedi Bulewa for the plaintiff  
Savenaca Banuve for the first defendant  
Kini Keteca for the second defendant  
Hamendra Nagin for the third defendant

g

30 August 2000.

## JUDGMENT

**a Fatiaki, J.**

On the 10th of August this Court granted on the oral application of plaintiff's counsel an interim injunction against the defendants restraining each of them, their servants and agents, from entering or removing anything from shops belonging to members of the Plaintiff Association. The injunction was granted until 15th August 10.00 a.m. and formal papers were ordered to be filed and served by fax and personally on the defendants by 4.00 p.m. on 12th August with liberty reserved to the defendants to apply on 24 hours notice.

**b** On 14th August, as ordered, the plaintiff filed papers seeking an extension of the injunction 'for 3 months to 15th November 2000'. The third defendant company ('SPR') on the same day filed papers seeking the dissolution of the injunction. Both applications were listed for chamber argument and heard together **c** on the 15th August. I remind myself that the plaintiff Association at the *inter partes* hearing for extension bears the burden of satisfying the Court that the injunction should be extended.

It is convenient that I should refer briefly to the background to this application which has its genesis in the bringing into force by Legal Notice No: 143 dated 24th November 1999, of the Copyright Act 1999 ('the Act') and, in particular, of **d** Section 30(2)(c) of the Act (which relates to copying of audio-visual works) which came into force on 1st July 2000.

Section 30(2)(c) of the Act in clear terms prohibits the unlicensed copying or reproduction of audio visual works which, despite its rather technical definition, would include such popular items as cinematographic films and video tapes.

**e** By its Originating Summons filed on 7th August, the Plaintiff Association seeks the following declarations:

- f**
- (a) That the Copyright Act 1999 was in contravention of sections 26, 29, 38 and 40 of the Constitution (Amendment) Act 1997, now superseded by sections 7, 10, 19 and 21 of the Fundamental Rights and Freedom Decree 2000.
  - (b) That the Copyright Act 1999 is fundamentally bad law being in contravention of section 44 of the Constitution (Amendment) Act 1997, and does not promote peace, order and good government of the nation as a whole.
  - (c) That the Copyright Act 1999 is fundamentally bad law because it creates situations of unlawful monopolistic practices in contravention of an existing law, the Fair Trading Decree 1992.
  - g** (d) The Minister's power to bring into force the Copyright Act 1999 is subject to judicial review. Further that the rules of natural justice were not following by the Minister in the exercise of this power under the said Act.'

and the plaintiff Association seeks an interim injunction pending the ruling or judgment of the Court.

There are before the Court the following affidavits:

(1) Three (3) affidavits deposed by Solomon Leweniqila who claims to be the Vice President of the Plaintiff Association ;

and

(2) An affidavit from Ravindra Patel a director of 'SPR'.

It appears from the plaintiff's affidavits and annexures that since about mid-March 1999 and as recent as 12<sup>th</sup> July 2000 the Plaintiff Association has vigorously campaigned on behalf of its membership for the non-implementation of the Act and for an extended grace period to allow its members time to re-organise their businesses in order to fully comply with the Act with a minimum of disruption. Suffice it to say that the authorities were unsympathetic and the Act duly came into force as gazetted.

Matters were finally brought to a head (so to speak) with the execution by the police of a search warrant on the Nadi premises of Kanti's Video Club, a member of the plaintiff Association on the morning of 10<sup>th</sup> August.

The relevant search warrant under Section 103 of the Criminal Procedure Code was issued by the Nadi Magistrate Court on the basis of information laid by a named police corporal 'that there is reasonable ground for suspecting that certain property namely pirate video tapes and recording apparatus in respect of which an offence has been committed (or which is necessary to the conduct of an investigation into an offence) is in a certain shop, dwelling house and premises at Main Street, Nadi Town of Arun Kumar ...'

The warrant also authorised 'the presence of the owners, agent and servant of the company SPR' during its execution.

At the hearing of the chamber application plaintiff's counsel by way of a preliminary argument urged the Court not to hear the defendants who were alleged to have contemptuously ignored the Court's ex-parte injunction which it is claimed was communicated by fax to the defendants and also orally to the police officers who were executing the search warrant. On hearing counsel for the 2nd and 3rd defendants I was satisfied however that all counsel ought to be heard on the substantive application.

Mr. Bulewa then proceeded to argue the extension application. He began by replying to an assertion in Ravindra Patel's affidavit that the plaintiff Association was not a registered body and was therefore 'not entitled to bring this action'.

The general rule in this regard is conveniently summarised in para.279 of Vol.6 of Halsbury's Laws of England (4<sup>th</sup> edn) which reads:

'An unincorporated members club, not being a partnership or legal entity, cannot sue or be sued in the club name, nor can the secretary or other officer of such club sue or be sued on behalf of the club, even if the rules purport to give him power to sue and provide for his being sued, unless this is permitted by statute.'

a Mr. Bulewa in seeking to avoid the 'general rule', argued that this defect in the Summons is a procedural matter that is not fatal to the issuance of the proceedings and could be easily rectified or regularised either by the formal registration of the plaintiff Association (under what particular statutory provision is not entirely clear) or reconstituting the action as a representative one under Or.15 r.14 of the High Court Rules 1988.

b In this latter regard the above paragraph cited from Halsbury's plainly recognises:

'Where numerous persons have the same interest in the proceedings, the proceedings can be begun and, unless the Court orders otherwise, continued by or against one or more of the club members as representatives of the other members or some of them.'

c Mr. Bulewa further relied upon the judgement of the majority in the Queensland Court of Appeal in **M & M Civil Engineering Pty. Ltd. v. SCTC** (1987) 2 Qd R.401 wherein it was

d Held : ... that the members of the management committee of the respondent were the only competent applicants but the description of the respondent in its application by its club name was a procedural irregularity capable of amendment and not a fundamental or incurable flaw in the application.'

e Having carefully considered the above judgment I am satisfied that it is easily distinguishable on the facts from the present case. In the **M & M** case there was a pre-existing partly performed contractual relationship between the parties prior to the action and three members of the club formally applied for and were appointed representatives of the club during the course of the proceedings *albeit* sometime after the particular order being challenged was made. Neither of these features is present in this case.

f I also cannot ignore the fact that the plaintiff Association has had an official letterhead which it has used in its various correspondence since March 1999 (i.e. over 12 months) and yet is unable to produce to the Court a certificate of registration or incorporation or any evidence that it is in the process of obtaining the same nor has leave been sought by anyone under Or.15 r.14(3) to commence these proceedings in a representative capacity.

g The absence of legal personality in this case has particular significance having regard to the nature of the declarations sought and, more especially, in the present application, to the ability of the plaintiff Association to furnish an enforceable undertaking in damages as is the almost universal practice where an interlocutory injunction is granted.

It is also unclear how the mere bringing into force of the Act specially affects of the plaintiff Association adversely as to render its membership capable of swing.

In the circumstances I uphold the third defendant's submission that the plaintiff Association has no *locus standi* to issue the Originating Summons and *a fortiori* to apply for interlocutory relief.

If however I should be wrong in so holding on this preliminary issue, then I turn to consider the application to extend the injunction. In doing so I am guided by the principles enunciated in the leading case of: **American Cyanamid Co. v. Ethicon** (1975) 1 ALL E.R.504. In this regard the threshold requirement which the plaintiff Association must demonstrate or establish is that it has an arguable case 'that there is a serious question(s) to be tried'.

I am also mindful of the refinements to the Cyanimid principles that were enunciated in the decision of the House of Lords in **Factortame Ltd. v. Secretary of State (No.2)** (1991) 1 ALL E.R. 70 in which the court was faced with an application for the grant of injunction where legislation was being challenged and the Court Held (so far as relevant for present purposes):

'In determining whether an interlocutory injunction should be granted in a case where the public authority was seeking to enforce the law against some person and ... that person sought an interim injunction to restrain the action of the authority (on the ground that the relevant law was, for some reason, invalid) the court should exercise its discretion according to the balance of convenience since it was doubtful whether an adequate remedy in damages on either side would be available. In doing so the court should take into account, in particular, the importance of upholding the law of the land in the public interest, bearing in mind the need for stability in society and the duty placed on certain authorities to enforce the law in the public interest. However, the Court should not restrain an apparently authentic law unless it was satisfied, having regard to all the circumstances, that the challenge to its validity was prima facie so firmly based as to justify such an exceptional course being taken.'

In seeking to fulfill this 'threshold requirement' and justify the extension of this 'exceptional course', Mr. Bulewa advanced three (3) arguments as follows: Firstly, he argued that there was irregularity in the Gazette notice bringing the Copyright Act and Section 30(2)(c) into force in so far as the decision nominating the respective commencement dates was taken in breach of the rules of natural justice and presumably, the plaintiff Association's legitimate expectations in that regard.

In particular, counsel drew the Court's attention to numerous letters and submissions sent by the plaintiff Association to various government officials, none of which, it is said, was ever replied to. In this respect there are three (3) relevant letters and one (1) undated submission which collectively seek a deferment of the commencement date of the Act and, in particular, '... a three (3) year moratorium be placed on those Sections of the Copyright Act pertaining to only foreign video and audio tapes copies of which are already in the possession of members (of the plaintiff Association)'.

Before dealing with the nature of the power being exercised by the Minister in nominating a commencement date for the Copyright Act it should be pointed out that, despite the absence of any acknowledgment of the plaintiff Association's letters and submission, there can be no doubting that the appointed commencement date for audio-visual works i.e. 1.7.2000 is significantly different from that which applied to other works protected under the Act i.e. 1.1.2000. To put it another

a way the plaintiff Association's letters and submissions although not acknowledged in writing (the entitlement to which is of considerable doubt), were nevertheless sufficient to persuade the relevant Minister to agree to defer the commencement date for audio visual works (which was of primary concern to the plaintiff Association) for a further six (6) months in addition to the eight (8) months that had elapsed since the Act received the Presidential assent.

b I turn next to consider the nature of the power that was exercised by the Minister in gazetting the commencement dates. The power is conferred by Section 1(2) & (3) of the Copyright Act in the following terms:

'(2) This Act commences on a date or dates appointed by the Minister by notice in the Gazette;

(3) The Minister may appoint different dates for the commencement of different provisions.'

c Furthermore the power was exercised by way of a Commencement Notice signed by the Minister and published in the Fiji Islands Gazette, the body of which reads:

'In exercise of the powers conferred on me by Section 1(3) of the Copyright Act 1999, I appoint 1<sup>st</sup> January 2000 as the date for the commencement of the Act, except that Section 30(2)(c), (which relates to copying of audio-visual works) commences on 1<sup>st</sup> July 2000.'

d In Halsbury's Laws of England (4<sup>th</sup> edn.) the learned editors in Vol. 1 para. 4 conveniently identified the various organs of government as comprising: '... the legislature, the executive or administration and the judiciary' and, after identifying the various functions of government as: 'legislative; executive or administrative; judicial and ministerial', the learned editors state: 'Broadly, legislative acts entail the formulation, making and promulgation of new rules of law which are of general application'.

e There is not the slightest doubt in my mind that the Minister in gazetting the commencement dates of the Act which is of general application, was performing a 'legislative act' albeit one delegated to him in the Act itself. In so doing it is trite that 'there is no right to be heard before the making of legislation whether primary or delegated, unless it is provided by statute' [(see: Administrative Law (4<sup>th</sup> edn.) by Wade at p.482)]. In short, Parliament does not have to act judicially.

f This is clearly illustrated by the case of **Bates v. Lord Hailsham of St. Marylebone** (1972) 1 W.L.R.1373 where the Lord Chancellor by Order under the Solicitors Act 1957 (U.K.) abolished the basis of scale fees for conveyancing transactions that had been in use for nearly 90 years and affected a profession of about 26,000 solicitors spread all over England, and where the plaintiff, a member of an association of solicitors which was not consulted, sought a declaration and an injunction in order to postpone the making of the Order and to allow wider consultation. Megarry J. in refusing the declaration and injunction said at p.1378:

'Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless those considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected by delegated

legislation, and affected very substantially, are never consulted in the process of enacting that legislation ; and yet they have no remedy ... I do not know of any implied right to be consulted or make objections, or any principle upon which the courts could enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given.'

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Needless to say 'the mere fact that the plaintiffs requested a hearing and the right to give evidence, cannot per se impose any legal obligation upon (the Minister), and cannot convert an otherwise administrative (or legislative) act into a judicial one' per Gresson J. in **Low v. Earthquake & War Damage Commission** (1959) N.Z.L.R.1198 at p.1208. A fortiori where the particular act complained of is the ministerial act of bringing into force an Act of Parliament.

b

Before leaving this submission however, some mention should be made about the form of proceedings adopted by the plaintiff Association to challenge the Minister's decision, namely, by way of Originating Summons seeking declarations and an injunction, which State Counsel says ought to have been brought by way of an application for judicial review.

c

Although counsel for the plaintiff Association sought to dismiss this objection as a mere procedural technicality, I cannot agree.

In the leading case of **O'Reilly v. Mackman** (1982) 3 W.L.R.1096 where the appellant sought to challenge decisions of the prison board of visitors made in November & December 1976 by way of an Originating Summons issued in 1980 claiming a declaration, the House of Lords in dismissing the appeal:

d

'**Held** : that since all the remedies for the infringement of rights protected by public law could be obtained on an application for judicial review, as a general rule it would be contrary to public policy and an abuse of the process of the Court for a plaintiff complaining of a public authority's infringement of his public law rights to seek redress by ordinary action and that, accordingly, since in each case the only claim made by the plaintiff was for a declaration that the board of visitors' adjudication against the plaintiff was void, it would be an abuse of the process of the court to allow the actions to proceed and thereby avoid the protection afforded to statutory tribunals.'

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In the present case the Minister's decision was gazetted in November 1999 and no less than eight (8) months have expired since then and a whole month since Section 30(2)(c) of the Act came into force. Clearly this latter decision was not something of which the plaintiff Association did not have any prior notice or warning and there can be no question of their being taken by surprise. No explanation has been given for the delay in issuing the present proceedings for remedies that, by their very nature, are discretionary, or, for the particular form of proceedings adopted.

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Lord Diplock in the Mackman case said at p.1105:

'... as compared with an action for a declaration commenced by writ or Originating Summons, the procedure under Order 53 ... provided for the ... decision-making statutory tribunal ... protection against claims which it was not in the public interest for courts of justice to entertain ...'

and at p.1106:

- a                   ‘The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer than is absolutely necessary in fairness to the person affected by the decision.’

b                   In the present case the plaintiff Association not only knowingly allowed Section 30(2)(c) of the Act to come into force without challenging it for a whole month, in addition, they now seek to have it ‘kept in suspense’ for a further ‘3 months ... or such other period as the Court deems just’.

On this score alone the plaintiff Association’s Originating Summons must be considered an abuse of process and ought to be struck out for want of proper form. This ground is *ex facie* unarguable and is accordingly struck out.

c                   Mr. Bulewa’s second argument is that in the absence of a functioning Copyright Tribunal the fundamental rights of the plaintiff Association under the 1997 Constitution to have access to ‘an independent and impartial tribunal’ are being breached and accordingly the authorities ought to be restrained from enforcing the Act so long as the Copyright Tribunal remains unmanned and inoperative.

d                   Counsel for the first defendant whilst accepting that no appointments have as yet been made to the Copyright Tribunal, nevertheless submits that the remedy (if any) lies not in the indefinite suspension of the Act in its entirety, but, in a Writ of Mandamus directed to the appropriate authority to appoint the members of the Copyright Tribunal.

e                   In any event Counsel for ‘SPR’ argues that the Copyright Tribunal is limited in its functions under the Act to receiving, considering and determining proposed licensing schemes and existing licensing arrangements to ensure compliance with the Act and, in this case, no relevant licensing scheme proposed or extant is being challenged by the plaintiff Association and accordingly, there is no civil dispute concerning the same that could be referred to the Copyright Tribunal even if it was functioning. Certainly no declaration has been sought in that regard and no ‘civil dispute’ has been properly raised in the plaintiff’s affidavits in support.

f                   I am satisfied that defence counsel’s submissions are sound in both respects and are accordingly upheld. Needless to say the rather limited and non-exclusive nature of the Copyright Tribunal weighs heavily against any suggested breach of the plaintiff Association’s constitutional or fundamental rights in this regard.

g                   The third limb of Mr. Bulewa’s argument complains about the manner in which the police are conducting searches and seizures at the business premises of the plaintiff Association’s members which counsel characterised as being ‘indiscriminate fishing expeditions’. This, it is claimed, is evidenced by the undisputed evidence that a large number of the video tapes seized from Kanti’s Video Club, are supported by genuine retail invoices of ‘SPR’ (not provided to the Court).

In this latter regard counsel for ‘SPR’, without sighting the particular invoices and in the absence of affidavit evidence, highlighted the obvious, when he said, that the mere existence of a legitimate invoice does not conclusively negate or



disprove the commission of an offence of unlawful copying of copyright material since a legitimately purchased copy may itself be illegally duplicated.

Counsel for the 2nd defendant who was most affected by this submission opposed it on two (2) grounds. Firstly, counsel argued that the injunction was an unwarranted interference with police investigations and enquiries into the alleged commission of offences against the Act and had the potential of enabling illegal activities to continue unabated and whatsmore, with the apparent sanction of the Courts, and counsel rhetorically asks, if the members of the plaintiff Association were/are in fact operating their businesses entirely within the law, then there would be no reason for them either to fear police investigations or to seek to prevent searches of their premises. Indeed, police enquiries may well establish the legitimacy of their operations.

Furthermore State counsel submits no injunction can be granted against the State [see: **Crystal Clear Video v. A.G. and Commissioner of Police** Suva Civil Action No. 331 of 1988 (unreported)] and the provisions of Section 15 of the Crown Proceedings Act (Cap.24) which reads (as far as relevant):

- '(1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that -

where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties.'

- (1) The Court shall not in any civil proceedings grant any injunction ... against any officer of the Crown if the effect of granting the injunction ... would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.'

Faced with the above provisions Mr. Bulewa valiantly sought to rely on the decision of the House of Lords in **Factortame (No.2)** *op.cit* where the Court granted an interlocutory injunction against the Secretary of State after having obtained a ruling of the European Court of Justice to the effect that a national court was required to set aside a rule of national law which it considered was the sole obstacle preventing it from granting interim relief in a case before that court concerning community law.

That decision however, is so plainly distinguishable from the present case that it is only necessary to refer to the judgment of Lord Bridge of Harwick where his lordship explains the paramountcy of Community law over national (U.K.) law (ibid at p.107/108):

'If the supremacy within the European Community of Community law over the national law of member states was not always inherent in the EEC Treaty it was certainly well established in the jurisprudence of the Court of Justice long

a before the United Kingdom joined the Community. Thus whatever limitation of its sovereignty Parliament accepted when it enacted the European Community Act 1972 was entirely voluntary. Under the terms of the 1972 Act it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to over-ride any rule of national law found to be in conflict with any directly enforceable rule of Community law.'

b There is in this case no jurisprudence or enactment which requires this court to ignore or over-ride the clear statutory prohibition expressed in Section 15 of the Crown Proceedings Act either as a final or as an interim measure.

In my view the correct position is authoritatively declared in the judgment of the House of Lords in **Factortame Ltd. v. Secretary of State for Transport** (1989) 2 All E.R.692 where it was:

c 'Held - (1) The court had no power (in English law) to make an order postponing the coming into force of a statute pending a reference to the European Court to determine its validity;

d (2) Moreover, the court had no power to grant an interim injunction against the Crown in judicial review proceedings because injunctions had never been available at common law in proceedings on the Crown side and that position has been effectively preserved by SS.21(2) and 23(2)(b) of the Crown Proceedings Act 1947 (which are in identical terms to our Sections 15(1) & (2) of the Crown Proceedings Act Cap.24).'

e This third limb of Mr. Bulewa's argument is also without merit and is accordingly rejected. Having said that I accept that both the 1997 Constitution as well as the Fundamental Rights and Freedoms Decree 2000 might be considered supreme or paramount enactments that require the courts to declare that any other legislation which contravenes or is inconsistent with their provisions 'is invalid to the extent of the inconsistency' but the burden of establishing such inconsistency is a heavy one not lightly to be inferred in the face of the well established presumption of validity of legislation.

f As was said by Lord Diplock in **F. Hoffman - La Roche v. Secretary of State** (1974) 2 All E.R.1128 at p.1153:

g 'The jurisdiction to determine that a statutory instrument is *ultra vires* does not arise until its validity is challenged in proceedings inter partes ... brought by a party whose interests are affected by the law so declared sufficiently directly to give him *locus standi* to initiate proceedings to challenge the validity of the instrument. Unless there is such challenge and, if there is, until it has been upheld by a judgment of the court, the validity of the statutory instrument and the legality of the acts done pursuant to the law declared by it, are presumed.'

In the present case not only is there considerable doubt as to the legal status of the plaintiff Association but there is also considerable doubt about its '*locus standi*' in terms of the Act which was plainly enacted to protect an owner's copyright in his original work. Needless to say the unlicensed or unauthorised

copying and hiring out of copyright- protected materials has always been an offence in this country ever since colonial times [see: **Robert Tweedle McCahill v. R.** F.C.A Cr.App.No.96 of 1982 (unreported)] and has merely been continued under the present Copyright Act.

This is not a case of an Act creating new offences or taking away long established common law rights previously enjoyed by the plaintiff Association's members - No! the Act as its long title suggests merely consolidated what has always been the law of this country.

As was said by Lord Goff in the **Factortame Ltd. (No.2)** case when considering the balance of convenience in a case which challenged the validity of subsidiary legislation (op.cit at p.119):

'... particular stress should be placed on the importance of upholding the law of the land, in the public interest, bearing in mind the need for stability in our society, and the duty placed on certain authorities to enforce the law in the public interest. This is of itself an important factor to be weighed in the balance when assessing the balance of convenience. So if a public authority seeks to enforce what is on its face the law of the land, and the person against whom such action is taken challenges the validity of that law, matters of considerable weight have to be put into the balance to outweigh the desirability of enforcing, in the public interest what is on its face the law, and so ... to render it just or convenient to restrain the authority for the time being from enforcing the law.'

In this latter regard Mr. Bulewa submitted that the enforcement of the Act, the validity of which is being challenged, threatens the livelihood and the continued viability and existence of the members of the plaintiff Association and their numerous employees, and that is a sufficient countervailing factor 'to outweigh the desirability of enforcing (the Copyright Act)'. I cannot agree.

It is difficult to understand *how?* the enforcement of the Act could possibly threaten the livelihood of the members of the plaintiff Association when such enforcement actions are solely directed at the detection, investigation and prosecution of criminal offences.

It needs hardly be said that no one, not even the members of the plaintiff Association, has a right to break the law in order to earn a living and the Courts will not and cannot be seen to condone such illegal activities however beneficial to some members of the community such acts might be.

I am satisfied that 'the status quo (qua offences) prior to 1.7.2000' which is urged upon the Court by Mr. Bulewa, has not been altered by the Act, and accordingly the balance of convenience in this case clearly favours the enforcement of the Act.

For the foregoing reasons the plaintiff Association's application to extend and continue the ex-parte injunction granted to it on 10<sup>th</sup> August 2000 is refused and the injunction is accordingly dissolved forthwith.

*Application refused.*

Marie Chan