



02-06-2022

SC/COM/JICA/000579/2021

THE SUPREME COURT OF MAURITIUS
(Commercial Division)
(Judge in Chambers)

In the matter of:-

Cloud Innovation Ltd

Applicant

v.

African Network Information Centre (AfrinIC) Ltd

Respondent/ Debtor

And in the matter of:

Ex parte:

Cloud Innovation Ltd

Applicant

ORDER

On 03 September 2021, an *ex parte* application was lodged whereby the applicant is praying for a "*saisie conservatoire commerciale*" of all of the 6.9 million IPv4 unused addresses presently held by the respondent pursuant to article 417 of the Code de Procedure Civile and on the authority of **Automotive Sales and Services Ltd v Rossland Ltd [2001 SCJ 181]**.

I have taken cognizance of the proceipe and affidavit both dated 03.09.2021 together with the documents annexed thereof.

The issues which I have to consider before reaching a decision as to whether the *ex parte* application should be granted are:

- i) whether there is an urgency;
- ii) whether the applicant has shown that there is a "*créance paraissant fondée en son principe*";
- iii) whether there is an imminent risk of "*détournement*" of the immovable property; and

- iv) whether the applicant has "*un intérêt sérieux*" to prevent that risk from materialising.

It transpires from the affidavit of the applicant that since 2013, the latter is a resource member of AfriNIC and it is only in 2021 that it has lodged a petition under section 178(2) of the Companies Act praying for its name be included in the register of members of the respondent and is further seeking damages in the sum of USD 1.8 billion. The applicant has slept over its alleged rights to be recognised as a member of the respondent for eight years and according to the applicant's affidavit, the respondent has refused to recognise it as a member. However, in the said petition, the Registrar of Companies has stated in its affidavit that the applicant is a resource member and is therefore a member/shareholder of the respondent. The issue of membership is still to be determined by the Court.

The circumstances of the present application is distinguishable from the case of **Automotive Sales and Services Ltd (supra)** wherein the applicant, a car trader, sold a vehicle to the respondent who made payment by way of a cheque which had not been honoured and the applicant failed to pay for the said car. It was for the applicant to convince the Judge of the genuineness of its "*créance*".

At this stage, it is apposite to refer to the following extracts from **Dalloz Répertoire Pratique Civile Vo Saisies et Mesures Conservatoires** which are relevant on the issue of *créance* –

Note 48 provides that «*Avant d'autoriser une mesure conservatoire, les juges doivent donc «rechercher l'existence non pas d'un principe certain de créance mais seulement d'une créance paraissant fondée en son principe» Par ailleurs, il appartient au requérant de fournir au juge les éléments permettant de le convaincre du sérieux de sa créance. En pratique, si la créance est trop hypothétique, le juge refusera l'autorisation ...»*

Note 49 further provides that «*Le juge compétent pour autoriser une mesure conservatoire apprécie souverainement si la créance est ou non fondée en son principe ...»*

In the absence of an order of the Court recognising the applicant as a member of the respondent, the applicant has no basis to establish that it has a "*créance*" of USD 1.8 billion

"paraissant fondée en son principe". Furthermore, the *"créance"* is not substantiated by any title.

The applicant has further stated in its affidavit at paragraph 31 that it does not intend to freeze all the accounts of the respondent in order to allow the latter to continue to operate pending the determination of the various litigations and yet it decides to ask for a *"saisie conservatoire commerciale"* in respect of the 6.9 million IPv4 unused addresses held by the respondent when it is well aware that the respondent is responsible to ensure equitable and efficient access of those unused IPv4 addresses in the African continent and the Indian Ocean region. The applicant has failed to establish that there is an imminent risk of *"détournement"* of the immovable property, namely the 6.9 million IPv4 unused addresses presently held by the respondent. The applicant has equally failed to establish that it has *"un intérêt sérieux"* to prevent that risk from materialising in the absence of an order of the Court recognising it as a member.

For the reasons given above, I decline to grant the orders prayed for and set aside the application.



**G. Jugessur-Manna
Judge**

07 September 2021