

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 108

CS 46/2020

In the matter between:

MULTICHOICE AFRICA HOLDINGS BV

1st Plaintiff

SUPERSPORT INTERNATIONAL (PTY) LIMITED

2nd Plaintiff

(rep. by Bernard Georges)

and

INTELVISION LIMITED

Defendant

(rep. by Laura Valabhji)

Neutral Citation: *Multichoice Africa Holdings BV & Anor v Intelvision Limited* (CS 46/2020) [2021] SCSC 108 (7 April 2021).

Before: Burhan J

Summary Copyright Act 2014 (Act 5 of 2014). Sections 22, 26, 27, 29, 30, 34, 35 and 36. Plaintiffs have established that the Agreement could be accepted as proof of exclusive rights being given to them to broadcast the CAF tournament. Therefore defendant prohibited from broadcasting same. Broadcast of CAF tournament by defendant amounts to unauthorized broadcasting and not covered by limitations contained in section 27 of the Copyright Act.

Heard: 12, 14, 19 October 2020, 3 and 24 December 2020 written submissions.

Delivered: 7 April 2021

ORDER

This court holds that the plaintiffs have established their case on a balance of probabilities and gives judgment in favour of the plaintiffs as set out below:

That a Commissioner be appointed to examine the accounts of the defendant and to assess the benefit made by the defendant in transmitting the 2019 edition of the Final Tournament of the Total Africa Cup of Nations, organised in Egypt between 21 June and 19 July 2019;

That the defendant pay the plaintiffs the sum decided on by court after receipt of the report by the Commissioner for breach of copyrights; and

Such further damages under section 30 of the CA as may ordered by court after the Commissioner appointed pursuant to prayer (a) has reported and costs.

JUDGMENT

BURHAN J

[1] The aforementioned plaintiffs filed plaint against the defendant seeking the following reliefs from court:

- (a) *“...that a commissioner be appointed to examine the accounts of the Defendant and to assess the benefit made by the Defendant in transmitting the 2019 edition of the Final Tournament of the Total Africa Cup of Nations, organised in Egypt between 21 June and 19 July 2019;*
- (b) *.... order the Defendant to pay the Plaintiff’s the sum of SCR 1 million for each breach of copyright; and*
- (c) *....grant the Plaintiffs such other civil remedies under section 30 of the Copyright Act as may be just and necessary including such damages as may be appropriate after the commissioner appointed pursuant to prayer a. has reported.”*

[2] As averred in the plaint, the first plaintiff MultiChoice Africa Holdings B.V. (“MultiChoice”) is a company registered in the Netherlands and is engaged in the business of supplying pay television services to customers in the Sub-Saharan Africa region and the adjacent Indian Ocean Islands, including Seychelles. It does so under the trademark and brand ‘DStv’. Further, as part of the pay television services offered under

DStv, MultiChoice broadcasts a number of sports channels under the trademark name and brand “SuperSport”.

- [3] The second plaintiff SuperSport International (Pty) Limited (“SuperSport International”) is a subsidiary company of MultiChoice and its activity is to negotiate, aggregate content and obtain rights for the distribution, broadcast and retransmission of sports matches and games to MultiChoice subscribers. It is further averred that the second plaintiff SuperSport International has negotiated and obtained an exclusive licence for pay television rights by the Confederation Africaine de Football (“CAF”) represented by its agent Lagardere Sports (“Lagardere”) for the transmission of all matches of the final tournament of the Total Africa Cup of Nations, organised in Egypt, also known as “Total Africa Cup of Nations, Egypt 2019” to a number of countries including Seychelles. CAF is the owner of all media rights pertaining to the said tournament and acts through its agent Lagardere. The plaint further avers that the aforementioned tournament was broadcast on the Super Sport 7, Channel 207 and SuperSport 10A on DStv and was also available via the DStv Now (web and app based live streaming platform).
- [4] It is alleged by the plaintiffs that the defendant (referred in the plaint as the respondent), Intelvision Limited (“Intelvision”) a company incorporated in the Seychelles and engaged in the business of providing downloaded pay television channels to customers in Seychelles via cable network, in breach of the exclusive pay television rights vested in SuperSport International and without prior permission from the plaintiffs advertised and disseminated the matches of the tournament to its customers in Seychelles form the start of tournament 21 June 2019 until it ended in July 2019.
- [5] The plaintiffs aver that the said action of the defendant infringed the provisions of the Copyright Act 2014 (“CA”) in the Seychelles, (Act 5 of 2014) and therefore the defendant is liable for damages for breach of copyright and, in the alternative, for exploiting and transmitting of the tournament by the defendant for profit without the permission of the plaintiffs, which constitutes a fault rendering the defendant liable for damages.

- [6] It is also averred in the plaint that as the plaintiffs have no access to the accounts of the defendant the plaintiffs are unable to assess their quantum of damages to be claimed due to the aforementioned causes of action.
- [7] Further, although the plaintiffs had filed an application before this court seeking an injunction restraining the respondent from televising the tournament, by the time the application was heard the tournament had been concluded and therefore no further injunctive relief was sort. It is based on the aforementioned causes of action that the relief set out in paragraph [1] herein is claimed.
- [8] The defendant company Intelvision Ltd in defence dated 20th July 2020 put the plaintiffs to strict proof in respect of the averments contained in paragraphs 1 to 8 of the plaint, admitted paragraph 9 of the plaint which is that the defendant company is a company incorporated in the Seychelles and operates from its place of business situated Providence. The defendant also admitted the fact that the said Intelvision is engaged inter alia in the business of providing downloaded pay television channels to customers in Seychelles via a cable network.
- [9] The plaintiffs opened their case by calling witness Joel Morgan who stated that he was the managing director of a company called Zane Holdings Ltd. The company is the sole licenced distributor of the DStv platform via satellite in the Seychelles. He further explained that the DStv platform broadcasts various sports channels under the name SuperSport and has the most popular channels for sports in the Seychelles. He further stated that Intelvision is a rebroadcaster of TV programs via satellite and also via fiber.
- [10] He stated he was aware of the football tournament in 2019 which started on the 21 of June 2019 and SuperSport International was transmitting this in the Seychelles through them and their customers were entitled to receive the broadcast of these matches. He was aware that other broadcaster Intelvision also showed the program in English and the Seychelles Broadcasting Corporation showed the content in French. He further explained under cross examination that his company Zane Holdings was the wholesale, retail and DStv commission agents and had nothing to do with the other broadcasters or distributors

namely Cable and Wireless or Intelvision. He further stated that Cable Wireless and Intelvision did not have the right to rebroadcast what was on the DStv platform.

[11] Mr Fredrik Jonker gave evidence over video link and stated that he was director of a company called El Deto. His duty was to investigate any issues pertaining to broadcasting violations pertaining to MultiChoice Group of companies. He stated that the MultiChoice group included Mnet, Show Max, El deto and DStv media sales, SuperSport International and that all form part of the MultiChoice group of companies. He stated that DStv is a multiple entertainment platform that provides paid television for its subscribers and viewers in the Sub-Saharan Africa in the African Continent. It was through the DStv platform that trading occurred.

[12] He further stated he specialised in the protection of the Intellectual property rights of the MultiChoice group. He stated that the companies referred to him in the group were all subsidiaries of a holding company called MultiChoice Africa Holdings BV. He further stated that if one wanted to access any SuperSport Channel content one could only access it through the DStv platform. He explained that he was aware of the CAF tournament and that one could access it legally through the SuperSport Channel by paying the MultiChoice subscriptions. He also explained to court ways of illegally obtaining access to channels, which was by obtaining a MultiChoice decoder under false pretence of using it for home viewing but instead using it to broadcast the contents illegally. He further explained how the content in SuperSport Channel could be illegally obtained from live streaming.

[13] Mr. Jonker stated that as Intelvision did not have an arrangement with the DStv to broadcast the content (CAF tournament), the showing of the content would be illegal. He further stated that after receiving information that Intelvision was showing the said content (CAF tournament) he had engaged lawyers in the Seychelles to get an injunction for Intelvision to desist from showing the content. An application was filed seeking such relief under the Copyright Act but by the time the matter was taken up in court, the tournament had been concluded and therefore the injunctive relief application was abandoned.

- [14] Mr. Phil Leavesly, Head of Legal in SuperSport International, the next witness for the plaintiffs stated that his workplace was situated at MultiChoice City in South Africa. He further stated that Multi Choice City was the headquarters for the Multi Choice group, which had about 102 subsidiaries many of which were housed within the building. Mr. Leavesly stated that there were subsidiaries in the territory of the Sub-Saharan Africa but all logistics and arrangement happened from the head office at MultiChoice City.
- [15] According to Mr. Leavesly, MultiChoice Pty Ltd was at the very top of the Multi Choice family. SuperSports International Holdings Limited and SuperSports International Pty Ltd were subsidiaries. The MultiChoice Africa holdings BV falls within the Sub-Saharan leg of the business. Both MultiChoice Holdings BV and SuperSport International were two companies within the MultiChoice group. He stated that DStv was the brand name and trademark through which they provide all TV channels. The owner of those DStv rights is currently MultiChoice Holdings BV.
- [16] Mr. Leavesly described in detail how a person could acquire the rights for broadcasting. He also explained that the earlier name of SuperSport International Pty limited was Leopard 47 Properties and produced documents P6 and P7 to establish same.
- [17] He stated he was aware of the CAF, the Confederation Africaine de Football as one of the football federations reporting to FIFA that hosts various football events including the African Cup of Nations Championship and other events such as CAF Confederation Cup, the African Cup of Nations Championship and the CAF Super Cup. He stated that the African Cup of Nations takes place every two years. It used to be a 16 team tournament since 2014 and goes into a knockout round. He stated he had a lot of involvement with CAF because in 2013 and 2014 he worked as Head of Legal for the African Cup of Nations, organising committee that hosted the African Cup of Nations in South Africa.
- [18] Mr. Leavesly further stated that MultiChoice and SuperSport International had an agreement with the CAF which spanned a number of years since 2014 and continued to beyond 2019. The said agreement granted SuperSport International exclusivity to broadcast within the Sub-Saharan African region in the territories specified in Annexure 2. He stated Seychelles was included in one of the territories.

[19] SuperSport International was granted broadcasting rights in the English language. Seychelles Broadcasting Corporation was granted rights for free to air the matches. Canal Plus was granted rights to broadcast it in the French language. It is clear from his evidence that Intelvision was not granted any right to air the said tournament by SuperSport International.

[20] The plaintiffs submitted through witness Mr. Leavesly a Licence Agreement as P10 (“Agreement”) between CAF as Licensor, duly represented by Lagardere Sports and IFAP Sports as Agents, Lagardere as Technical Service Provider (“TSP”), MultiChoice and SuperSport International as Licensees. Two letters issued by Lagadare the agents of CAF relevant to the said agreement were produced as P8 and P9.

[21] Thereafter the plaintiffs closed their case.

[22] The defendant did not lead any evidence but made written submissions. The main line of defence as borne out in the cross examination was that the said Agreement P10 between CAF, MultiChice and SuperSport International could not be relied on as it had not been signed by the parties concerned.

[23] The main contention of the defence is that the said Agreement copy is not signed by the Licensor and Agent, and signed only by the Licensee, MultiChoice and SuperSport International and therefore could not be relied on by the plaintiffs. It would be pertinent at this stage in dealing with this contention to refer to Article 1108 of the Civil Code of Seychelles which provides 4 conditions essential for validity of the contract, which are:

“The consent of the party who binds himself,

His capacity to enter into a contract

A definite object which forms the subject-matter of the undertaking,

That it should not be against the law or against public policy.”

Unsigned Agreement

[24] Learned Counsel for Intelvision submits in the submission of defendant (page 4 Merits of the Case) that the first condition is not met as the Agreement was not signed by the other

parties and no evidence has been led to show that the other parties had consented to be bound by the Agreement.

[25] Clause 11.11 of the General Terms of the Agreement provides that, “*Counterparts: This Agreement may be executed in separate counterparts which taken together shall constitute one binding agreement*”. Therefore, the provided copy by the plaintiffs may be one of the counterparts, however, the Agreement itself provides that counterparts taken together shall constitute binding agreement. Mr Leavesly, Head of Legal in SuperSport International Private Limited stated the following regarding the agreement at pages 16, 29-30 of Court Proceedings 14th October 2020 at 2pm:

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“ . . . what is important to know that it was unsigned so in effect we tacitly we have complied according to that agreement, both parties, they have supplied everything they had to supply to us. We have delivered all our obligations including payments around that but I am not sure why it was not fully signed, we signed it, our representative had signed.”

Page 29-30

“No, in terms of a written agreement, we could argue that it is not fully binding. However, the parties have honoured the spirit of that agreement and this reflects the memorandum of understanding, which is essentially a very similar agreement and hence that would be the one we would most likely rely upon.

. . .

in terms of a fully signed written agreement, we do not have CAF or Sport Five signature on that although we do have a fully signed memorandum of understanding which is the agreement that preceded this agreement.

I am not sure the reasons, I think it was just a formality that just through the cracks, I do not think there was any intention not to sign because the parties have honoured all the terms. We’ve continued to pay, they continued to supply us with the content.”

[26] With regard to contracts in general it is established law that acceptance can be express or by conduct (*Farm Ag Exports v Larue* (1993-1994) SCAR 282) and contract can come

into existence as a result of a performance of obligations (*Brogden v. Metropolitan Railway* (1877) 2 AC 666). It was further stated in *G Percy Trentham Ltd v Archital Luxfer Ltd* [1993] 1 Lloyd's Rep 25 that, "the fact that a transaction was performed on both sides will often make it unrealistic to argue that there was no intention to enter into legal relations".

- [27] The Copyright Act in Seychelles does not expressly provide that assignment or licence will not be effective unless in writing, however, it does state that assignment of exclusive licence shall be in writing:

"Assignment and licensing of economic rights

22. (1) *The economic rights in a work shall be assignable in whole or in part.*

(2) *An assignment of an economic right, and any **exclusive licence** to do an act subject to authorisation by the author or other owner of copyright, **shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.***

(3) *An assignment in whole or in part of any economic right, or a licence to do an act subject to authorisation by the author or other owner of copyright, shall not include or be deemed to include the assignment or licence of any other rights not explicitly referred to therein." (emphasis added)*

- [28] Economic rights are defined in section 7 of the CA:

"Economic rights

7. (1) *The author or other owner of the copyright shall have the exclusive right to undertake or to authorise the following acts in relation to the work-*

(a) *reproduction of the work;*

(b) *translation of the work;*

(c) *adaptation, arrangement or other transformation of the work;*

(d) *distribution of the original or a copy of the work to the public;*

(e) *rental of the original or a copy of an audio-visual work, a work embodied in a phonogram or a computer programme;*

(f) *public performance of the work;*

(g) *broadcasting of the work; or*

(h) *other communication to the public of the work.*

(2) The right of distribution under subsection (1)(d) does not apply to the original or a copy of the work that has already been subject to a sale or other transfer or ownership, in any country or territory, authorised by the owner of copyright.

(3) The right of rental under subsection (1)(e) does not apply to rental of computer programmes where the programme itself is not the essential object of the rental.”

- [29] It would be pertinent to mention at this stage that the governing law of the Agreement is stipulated in Clause 11.10 of the General Terms (page 29/43 of P10) and is the laws of France. Under French law “*copyright licences are subject to general contract law. Audiovisual contracts must be in writing*”¹.
- [30] Therefore, the Seychelles and French law provide that copyright licence shall be in writing and signed by both parties. Furthermore, Seychelles Civil Code provides monetary limit on the value of the matter of SCR 5,000. Any matter that exceeds such value shall require written document and no oral evidence shall be admissible against and beyond such document. *Leber v Babema* (1981) SLR 142 provides that an agreement signed only by the plaintiffs is not a valid contract and emphasises that “*oral evidence of a contract is not admissible where the subject-matter exceeds R 5000, unless there is some writing providing initial proof of the contract*”.
- [31] With regard to contracts assigning intellectual property rights or licences thereof in the UK, the assignment will not be effective unless it is in writing (section 90(3) of the Copyright, Designs and Patents Act 1988 (the “CDPA”) and licences, especially exclusive ones, usually should be in writing refer section 92(1).
- [32] Nevertheless, with regard to consent or acceptance element of the contract, *Reveille Independent LLC v Anotech International (UK) Ltd* [2016] EWCA Civ 443, which includes intellectual property, illustrates UK court’s approach to overriding formality provisions and provides a reminder that a prescribed mode of acceptance can be waived by conduct. The Court of Appeal upheld the High Court decision and found that a binding agreement had been formed. The court pointed out that it is established law that a party can waive a prescribed mode of acceptance by conduct as long as that acceptance

¹ <https://iclg.com/practice-areas/copyright-laws-and-regulations/france> at para 3.2

does not prejudice the other party; Furthermore, the court considered that while the subsequent conduct does not necessary mean acceptance in all its necessary forms, the conduct of the parties was relevant in confirming their beliefs that there was in fact a binding contract.

[33] It is also to be noted that the issue in this instant case of there not being a binding contract is not between the parties to the Agreement P10 as none of them are claiming prejudice against each other. The unsigned Agreement is produced by the plaintiffs as a potential proof of exclusive rights in relation to the broadcast of the football matches during the Total Africa Cup of Nations 2019 Tournament.

[34] Mr. Leavesy evidence is that even though CAF and Lagardere did not sign the Agreement, the parties performed their obligations under the Agreement, payments were made and access to feed for broadcast was granted, thereby arguably creating a binding agreement. Furthermore, as stated in *Reveille v Anotech* (supra) a party can waive a prescribed mode of acceptance by conduct as long as that acceptance does not prejudice the other party.

[35] With regards to performing mutual obligations, although CAF and Lagardere were not witnesses during the court sittings to testify regarding validity of the Agreement, there are two additional letters (P8 and P9) both dated 26th June 2019 (during the period of the matches) from Lagardere, duly appointed to do so by the CAF, as agent of CAF confirming that there is licence agreement with SuperSport International on an exclusive basis for transmission of the matches in question, therefore also confirming certain obligations and rights under the Agreement. The two letters expressly confirm the following points regarding the territory of Seychelles:

1. The CAF has granted, by licence agreement to SuperSport International a licence on an exclusive basis, for the transmission of all the matches of the Final Tournament of the Total Africa Cup of Nations, organised in Egypt from June 21st to July 19th, by all Pay TV broadcast means in any language except French;
2. SuperSport Intenational, Canal+ and Seychelles Broadcasting Corporation (SBC) are the only entities which are authorised to use within the territory of

Seychelles the right to transmit the matches by broadcast means, Pay Tv, through any TV or digital platform accessible on a subscription fee basis;

3. The granted rights are protected by applicable laws and regulations against any unauthorised or improper use;
4. In case of unauthorised or improper use, SuperSport International and CAF, acting together or separately, shall be entitled to take appropriate steps, including legal proceedings, against any third party which caused or assisted in it and to claim any damages suffered as a result of such unauthorised or improper use.

[36] Both letters are signed by the Lagardere as agent of the CAF and were not challenged. This court is of the opinion that viewed together the Agreement P10 and the Letters P8 and P9 provide strong inference that SuperSports International had the exclusive licence to broadcast the matches (except in French) and were the only authorised entities to do so. Furthermore, the letters provide strong inference that the parties to Agreement were performing their obligations under the Agreement. Additionally, the letters can be viewed as a confirmation of obligations and under Article 1338(1) of the Civil Code.

[37] Following the court's position in *Reveille v Anotech* (supra) and for the aforementioned reasons I am satisfied the parties could enforce unsigned agreement against each other, if they had performed their obligations under the agreement.

[38] The defendant states that even if the parties performed their obligations under unsigned Agreement, the Agreement may be proof of "*some sort of agreement*" but not proof of an exclusive agreement. Mr. Joel Morgan, Managing Director of Zane Holdings Limited stated that to his knowledge Intelvision in addition to advertising the matches to subscribers on Facebook (P1) also showed the matches in English, which he watched himself (pages 4 and 9 of the Court Transcripts of 12th October 2020 at 9:30 am). Although, SuperSport logo was "*not visible*" and "*. . . there was a blanking out to certain things . . . A part on the screen where normally a logo will appear was not visible*".

[39] The defendant has not denied the claim that they broadcasted the matches and has not provided any supporting evidence that they had a licence to do so. Considering the

aforementioned evidence it is clear that the exclusive rights to broadcast such a tournament in English through their platform DStv were given to the plaintiffs, therefore the defendant is prohibited from broadcasting the matches without authorisation under section 26(3) of the CA, which relates to rights of broadcasting organisation.

[40] As noted earlier, broadcasting of work is one of the economic rights under section 7 of the CA that can be assigned under section 22. Part III of the CA deals with the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. Rights of broadcasting organisations are provided in section 26:

“Rights of broadcasting organisations

26. (1) *A broadcasting organisation shall have the exclusive right to carry out or to authorise any of the following acts -*

- (a) the rebroadcasting of its broadcast;*
- (b) the communication to the public of its broadcast;*
- (c) the fixation of its broadcast; or*
- (d) the reproduction of a fixation of its broadcast.*

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

(3) Any programme-carrying signals transmitted by satellite which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorised receiving organisation, may not be broadcast or communicated to the public by any person without authorisation of the person or legal entity that decided what programme the emitted signal would carry.” (emphasis added)

[41] Section 3 of the CA defines "broadcasting" as *“the communication of a work, a performance or a phonogram to the public by wireless transmission, including transmission by satellite”*.

[42] Section 34 provides that an act under section 26(3) above is a prohibited act deemed to be an infringement of rights:

“34. The acts prohibited under section 26(3) and sections 32 and 33 shall be deemed to be an infringement of rights protected under this Act, for the purposes of sections 29, 30 and 31.”

[43] Therefore, the defendant had, in broadcasting the matches without authorisation to broadcast, infringed the rights resulting in the necessity for remedial action under Part V of the Act.

[44] Section 27 provides limitations on protection under section 26:

“27. Sections 23, 24, 25 and 26 shall not apply where, without commercial advantage, the acts referred to in those sections are related to -

- (a) *using short excerpts for reporting current events to the extent justified by the purpose of providing current information;*
- (b) *reproduction solely for scientific research;*
- (c) *reproduction solely for the purpose of face-to-face or distance teaching activities, except for performances and phonograms which have been published as teaching or instructional materials; or*
- (d) *cases where, under Part II, a work can be used without the authorisation of the author or other owner of copyright.*” (emphasis added)

[45] It appears that emphasis is being made that limitation of protection applies where there is no commercial advantage. The advertisement by the Intelvision on their Facebook page as borne out in document (P1) clearly states: “*intelvision brings you exclusive coverage on our Extravagance Bouquet. Get Extravagance for only SCR 790 per month. . .*” The advertisement apart from being wrong regarding exclusivity (as the defendant had not been provided any licence to broadcast the matches) implies commercial advantage.

[46] Therefore in order to ascertain the commercial advantage gained this court is of the view that a Commissioner has to be appointed to examine the accounts of the defendant to assess the profit made (if any) in transmitting the matches as prayed for by the plaintiffs.

[47] The defendant coherently analyses application of sections 4, 5 and broadcasters’ right in terms of the scope of protection provided under sections 35 and 36 and concludes that because neither the plaintiffs, nor CAF nor Lagardere are situated in Seychelles and matches are transmitted to Seychelles from transmitters outside of Seychelles via satellite, the rights are not protected under the Act due to its scope of application.

- [48] The defendant further states that the plaintiffs have neither pleaded nor led any evidence regarding protection by virtue of any international treaty and therefore “*the Defendant would not address this matter unless Court so requires it to do*”. The defendant is incorrect in this statement, as paragraph 11(a) of the plaint expressly states that the actions of the defendant infringed the provisions of the CA in that “*the content of which the Second Plaintiff was the exclusive distributor to Seychelles comprised works eligible for protection by virtue of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of which Seychelles is a party*”.
- [49] Furthermore, the learned Counsel for the defendant in the cross-examination of Mr. Jonker did ask him a brief question as to whether he was claiming an infringement of his rights which were protected by virtue of the TRIPS agreement which he answered in the affirmative (page 35 of Court Transcripts of 12th October 2020 at 9:30 am). The TRIPS Agreement (the Agreement on Trade-Related Aspects of Intellectual Property Rights) is an international legal agreement between member nations of the World Trade Organization, of which Seychelles is a member nation.
- [50] Both sections 35 and 36 further clarify that the CA applies to works and broadcast that are eligible for protection in Seychelles in accordance with international treaty:

Scope of application of copyrights

35. (1) *The provisions of this Act on the protection of literary and artistic works shall apply to -*

...

(c) audio-visual works, the producer of which has his or her headquarters or habitual residence in Seychelles; and

(2) The provisions of this Act shall also apply to works that are eligible for protection in Seychelles by virtue of and in accordance with any international convention, treaty or agreement to which Seychelles is party.

Scope of application of related rights

36. (3) *The provisions of this Act on the protection of broadcasts shall apply to -*
(a) broadcasts of broadcasting organisations the headquarters of which are situated in Seychelles; and

(b) broadcasts transmitted from transmitters situated in Seychelles.

(4) Section 25(3) applies to programme-carrying signals the originating organisation of which is situated in Seychelles.

(5) The provisions in this Act shall also apply to performers, producers of phonograms, broadcasting organisations and originating organisations, as defined in section 25(3), that are eligible for protection by virtue of and in accordance with any international convention, treaty or other agreement to which Seychelles is party.” (emphasis added)

Findings

[51] For all the aforementioned reasons this court is satisfied that the plaintiffs have established on a balance of probability that the agreement P10 can be accepted as proof of an exclusive licence being given to the plaintiffs to broadcast the CAF tournament in English through the DStv platform in the Seychelles. Therefore the defendant Intelvision had no right to broadcast such tournament.

[52] This court is further satisfied that the defendant is prohibited from unauthorised transmission under section 26(3) of the CA, which protects the rights of the broadcasting organisations; and such action is an infringement of rights protected under the CA, for the purposes of sections 29 (provisional measures) and 30 (civil remedies). The limitations on protection under section 26 as set out in section 27 of the CA do not apply to the defendant. Further this court is satisfied that the provisions of the Copyright Act applies to works that are eligible for protection in Seychelles by virtue of any international convention, treaty or agreement to which Seychelles is a party including TRIPS by virtue of section 35(2) of the Act.

[53] Therefore this court holds that the plaintiffs have established their case on a balance of probabilities and gives judgment in favour of the plaintiffs as set out below:

- i. That a Commissioner be appointed to examine the accounts of the defendant and to assess the benefit made by the defendant in transmitting the 2019

edition of the Final Tournament of the Total Africa Cup of Nations, organised in Egypt between 21 June and 19 July 2019;

- ii. That the defendant pay the plaintiffs the sum decided on by court after receipt of the report by the Commissioner for breach of copyrights; and
- iii. Such further damages under section 30 of the CA as may be ordered by

court after the Commissioner appointed pursuant to prayer (a) has reported and costs.

Signed, dated and delivered at Ile du Port on 7 April 2021.

M Burhan J