



MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA
Symbiosis International (Deemed University), Pune

9th NASCENT Moot Court Competition, 2019

Compromis

Noratu and Nanahan

v.

Sesaku and Otto

1. Though he was never the smartest student in school or college, and often got into trouble for his backbencher pranks, by dint of sheer hard work and determination, and thanks to his immense retention capacity, Noratu Uzamiku was able to gain admission to the foremost research institute of Kanoho country, pursuing a Masters in Biology. A personal recommendation from his professor Mr. Iraku Umoni to the Dean of the institute helped majorly too. Noratu's groundbreaking study in mass replication techniques of the *kibyuu karamu* virus gained international repute in the industry, and the subsequent paper that he published became one of the widest cited papers on the subject given its significance in understanding how the virus spread.
2. Mindful of his humble origins and his limitations, Noratu never let his newfound celebrity get to his head, dutifully completing his masters, still struggling to eke out the bare minimum credits to get his degree. "I was never an intelligent kid – never a genius. I was called an idiot in the past, perhaps justifiably so. There are people in this industry who are far better than I am at a much younger age. Sesaku Uchahi and Raaga Subokana come to mind, for instance. Those are the real geniuses. While I'm grateful for all the attention you guys are giving me, honestly, I was only trying to get my professor to acknowledge the work I was putting in so that I pass!" Noratu said, grinning, when he was being interviewed for the *Scientia* magazine.
3. Dr. Kikasha Hetaka, his professor, recommended Noratu to Nanahan Limited, a major research and development company in Kanoho, where he was to join as a researcher, much to the chagrin of Sesaku Uchahi, the most renowned researcher of the company and leading scientist of the industry. He openly opposed Noratu's hiring to the Board of

Directors of the company, “the guy admits to being an idiot. He is a one-study wonder. His entire extent of knowledge is the *kibyu karamu* virus; the guy knows nothing. We have a singular purpose here in Nanahan, I hope the Board doesn’t forget that. Noratu is only going to delay our achieving our goal!”

4. Despite Sesaku’s opposition, Noratu was hired, largely at the insistence of the CEO, Mr. Surotiba Asamu, who used to be Dr. Kikasha’s professor before founding the company. On joining, Noratu signed the standard non-compete and non-disclosure agreements that Nanahan made everyone sign. Never the team player, Sesaku openly criticised Noratu while with the other employees of the company, who too were highly sceptical of Noratu’s capability. “He may have published papers on mass replication techniques, but he barely seems to know his basics. The other day, I saw him look up ‘do viruses replicate using cell division’ on the internet! How did he even get a masters degree?” Sesaku disdainfully remarked to his colleagues once over lunch in the first week of Noratu’s joining.
5. Though he was aware of all the snide remarks being passed behind his back, he knew that the days of backbencher tomfoolery were over, and he had to justify the faith placed in him by everyone along the way, including Mr. Iruka, Dr. Kikashi and Dr. Surotiba. A cheerful, amiable and eminently likeable person, Noratu soon began winning hearts at the company with most of the company completely taken in by his incredible dedication to excelling. “That’s the thing about Noratu”, remarked Dr. Kikasha to Dr. Surotiba, explaining the phenomenon, “he makes you want to root for him.”
6. Thanks to Noratu’s already existing celebrity status in the industry, combined with his awkward albeit charming social skills, Nanahan Limited began getting considerably more funding towards research and development than ever before. Sesaku, a purist who believed in the importance of the pursuit of knowledge, grew weary of merely scoffing at the rising adulation for the man he believed was converting the company into a business house.
7. In a scathing paper written with Dr. Oricho Mura, Sesaku deconstructed the data behind Noratu’s *kibyu karamu* paper, pointing out multiple inconsistencies in their parsing and calculations. “Not only does the data appear sanitised to suit the conclusions, the illogicity of some of the interim conclusions reached by the author are perplexing at best...But for what appears to be a happy accident, the self-confessed idiot would probably have found that *kibyu karamu* has four legs and nine tails using the same data.”

8. Sesaku tendered his resignation the evening before the paper was released, and, the next day, joined Otto Limited, a rival research and development company started by Dr. Oricho Mura, himself a former employee of Nanahan Limited, who is alleged as having left Nanahan Limited stealing various trade secrets. Facing the prospect of Nanahan Limited's funding being reduced by nearly half, Noratu was compelled to release his detailed notes and workings on the *kibyu karamu* paper for peer review. His parsing and calculations were found to be entirely unorthodox, but great weightage was given to the fact that independent calculations have shown his conclusions to be correct.

9. Shortly thereafter, Noratu sued Sesaku, contending defamation, and seeking Rs. 2,50,00,000 as compensation. Nanahan Limited sued Sesaku for breach of contract, particularly of the non-compete clause, and sued Otto Limited for tortious interference, for a joint amount of Rs. 2,50,00,000. Sesaku denied defamation, contending *inter alia* that his statements were truthful and justified. Otto Limited admitted to having offered Sesaku the job around the time Noratu joined Nanahan Limited, but contended that it cannot be held liable for Sesaku breaking the contract.

10. The High Court of Yindemoui directed that both matters be heard together since they are based on various common facts. The Court directed that the matter be listed for final hearing on January 20, 2019, and directed parties to file their memorandum of submissions on or before January 10, 2019. It framed the following issues for the hearing, and directed that unless compelling reasons are shown, no further issues would be taken up for hearing¹:
 - 10.1 Whether Sesaku defamed Noratu, and if yes, whether he is liable to pay damages.
 - 10.2 Whether Sesaku broke the contract with Nanahan Limited, and whether he violated the non-compete clause.
 - 10.3 Whether Otto Limited induced breach of contract between Sesaku and Nahanan Limited.

Notes:

1. All names, characters, places and incidents above are entirely fictional with resemblance to any real life equivalent being coincidental at best, mistaken at worst.

¹ This Compromis has been drafted by Mr. R. Arunadhri Iyer. Any attempt to contact him to seek clarification/advice/opinion etc. relating to the compromis by any member of a registered/potential team or their friends/relatives/acquaintances shall disqualify the team from NASCENT 2019.

2. Kanoho is a fictitious country with a Constitution and laws in *pari materia* with that of India. Yindemoui is a fictitious territory with laws in *pari materia* with the National Capital Territory of Delhi.
3. Otto Limited is a competitor of Nanahan Limited for the products it sells, but not the areas of research. While Nanahan Limited conducts research and is involved in creating new drugs, Otto Limited is involved in producing generics of drugs, medical accessories and other medicine related items. It has not conducted any in-house research till date. It was understood that after 200 days of joining, Sesaku will expend efforts towards establishing and running a research wing for Otto Limited.
4. It is an admitted fact that till Noratu's joining, a substantial portion of funding for Nanahan Limited (which constituted 45% of its income) arose from funding that was generated by Sesaku's presence.
5. Sesaku joined Otto Limited in an administrative and managerial position.
6. The jurisdiction of the Court, the joinder of parties and the quantum of damages has not been disputed by the parties. However, parties are advised to familiarise themselves with the basis for jurisdiction.
7. Sesaku's contract with Nanahan Limited was scheduled to expire six months after the publication of the article against Noratu. Otto Limited had no ostensible means of knowing the contents of the contract between Nanahan Limited and Sesaku. Otto Limited has similar non-compete clauses with its own key employees. Such clauses are admitted by Otto Limited as being industry standard where non-compete clauses are used.
8. The parties admit and agree that clauses 7.3, 7.4 and 7.5 of the agreement between Sesaku and Nanahan Limited are to be read together, and constitute the entirety of the non-compete agreement between the parties. Clauses 7.3, 7.4 and 7.5 are reproduced below:

7.3. The Researcher agrees that for the duration of this agreement and continuing until the expiration of 12 (twelve) months thereafter the Researcher will not, directly or indirectly, as a sole proprietor, partner, member, shareholder, officer, director, employee, agent, joint venturer, principal, trustee, licensor, independent contractor, consultant or otherwise:

a) engage in any Competing Business; or

b) assist or be involved with, for or without compensation (whether cash, stock, property or otherwise), or act as a scientific, technical, management, commercial or other advisor (by whatever name called) to, any other person or entity so engaged or to be so engaged.

7.4 As used herein the terms “Competing Business” shall mean any business which in whole or in part is the same as or similar to or competitive with the Business or which involves, directly or indirectly, any technology, methodology, game plan, strategies, trade secrets and / or intellectual properties which is / are now or hereafter used by and / or associated with the Business.

7.5 As used herein, the term “engage in a business” or “engage in any business” (and similar phrases with respect to Competing Business) shall include, without limitation, the Promoter doing, directly or indirectly, any of the following acts:

- a) Participating, in any capacity, in the operation or functioning of any Competing Business; or*
- b) As agent or principal, carrying on or engaging in any activities or negotiations with respect to the acquisition or disposition of any Competing Business; or*
- c) Allowing his name or reputation to be used in any Competing Business.*

***** ALL THE BEST! *****