



PT Lautan Natural Krimerindo v Kenya Ports Authority & 3 others (Commercial Case E027 of 2023) [2023] KEHC 27377 (KLR) (20 December 2023) (Judgment)

Neutral citation: [2023] KEHC 27377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL CASE E027 OF 2023
DKN MAGARE, J
DECEMBER 20, 2023**

BETWEEN

PT LAUTAN NATURAL KRIMERINDO APPELLANT

AND

KENYA PORTS AUTHORITY 1ST RESPONDENT

NUNO NAPOLES & 2 OTHERS 2ND RESPONDENT

JUDGMENT

1. The Plaintiff filed suit vide a plaint dated 8/11/2023. They claim the following:
 - a. A Declaration that the 1st Defendant has no right to the consignment in container number EMCU8848905/40H/EMCRRH1032 and container number TLLU7680483/40H/EMCRRH1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 09 MP (hereinafter referred to as the “suit property” being the subject of Bill of Lading No. 081300184431 and that the consignment is lawfully the property of the Plaintiff.
 - b. An order that a permanent injunction be and is hereby issued, restraining the 1st, 2nd., 3rd and 4th Defendants, their servants, agents, assigns, proxies, personal representatives and/or persons exercising authority from them acting on its behalf and/ or under its mandate from taking possession of, inhibiting, alienating, dealing in or with, disposing of, trespassing and/or in any other manner interfering with the consignment in container number EMCU8848905/40h/EMCRRH1032 and container number TLLU7680483/40h/emcrrh1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 09 MP (hereinafter referred to as the “ suit property”) being the subject of Bill of lading No. 081300184431.
 - c. An order that a permanent injunction be and is hereby issued, restraining the 4th Defendant, their servants , agents , assigns proxies, personal representatives, and/or persons exercising authority from them acting on its behalf and/or under its mandate



from taking possession of, inhibiting, alienating, dealing in or with, disposing of, trespassing, issuing a release order and/ or in any other manner interfering with the consignment in container number EMCU8848905/40H/EMCRRH1032 and container number TLLU7680483/40H/ EMCRRH1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 09 MP 9 hereinafter referred to as the “suit property”) being the subject of Bill of lading No. 081300184431.

- d. An order that the Plaintiff shall take possession of container number EMCU8848905/40H/ EMCRR1032 and container number TLLU7680483/40H/EMCRRH1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 0-9 MP (hereinafter referred to as the “suit property”) being the subject of Bill of Lading No. 081300184431 and;
 - e. An order for costs against the 1st Defendant in this matter.
 - f. Such other orders as the Court may deem fit.
2. The matter was ordered served and proceed by way of case stated. The Defendant did not oppose the suit. The Uganda Revenue Authority confirmed that the 1st Defendant if not registered with them and could be fictitious.
 3. The Plaintiff is said to be a company incorporated in Indonesia carrying business in Pesanggrahan Village, kutorejo district, Mojokerto Regency. The first defendant an individual initiated business worth USD 128,750.005 which was to be paid upon delivery of goods from the port of Surabaya, (no pun intended) to the Port of Mombasa.
 4. The money was transferrable on arrival. Being villagers, the plaintiffs agreed not knowing that the world is a global village with village thieves. The plaintiff shared a proforma invoice No. P1/INT/ LNK/2023/VIII – 0084.
 5. The goods were shipped and arrived on 15/10/2023. The plaintiff supplied goods of highest quality. However, payment did not turn up. The 1st defendant thereafter went missing. The consideration of USD 128,750.005 has not been paid.
 6. Though pleaded both under breach of contract and fraud, the reality that this was fraud and unpaid seller’s lien. Section 41 of the [sale of goods Act](#) provides as doth: -

“ 41. Seller’s lien

- (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases
—
 - a. where the goods have been sold without any stipulation as to credit;
 - b. where the goods have been sold on credit, but the term of credit has expired; (c) where the buyer becomes insolvent.
- (2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.”



7. In this claim I find that the plaintiff's claim is proved. They are entitled to have possession not only of the goods out also a refund all expenses incurred to bring the goods to the country.
8. I therefore allow the prayers as sought in the plaint with costs of USD 3,333

Determination

9. Consequently, I make the following determination: -
 - a. A Declaration that the 1st Defendant has no right to the consignment in container number EMCU8848905/40H/EMCRRH1032 and container number TLLU7680483/40H/EMCRRH1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 09 MP (hereinafter referred to as the "suit property" being the subject of Bill of Lading No. 081300184431 and that the consignment is lawfully the property of the Plaintiff.
 - b. An Order that a permanent injunction be and is hereby issued, restraining the 1st, 2nd, 3rd and 4th Defendants, their servants, agents, assigns, proxies, personal representatives and/or persons exercising authority from them acting on its behalf and/ or under its mandate from taking possession of, inhibiting, alienating, dealing in or with, disposing of, trespassing and/or in any other manner interfering with the consignment in container number EMCU8848905/40h/EMCRRH1032 and container number TLLU7680483/40h/emcrrh1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 09 MP (hereinafter referred to as the " suit property") being the subject of Bill of lading No. 081300184431.
 - c. An Order that a permanent injunction be and is hereby issued, restraining the 4th Defendant, their servants , agents , assigns proxies, personal representatives, and/or persons exercising authority from them acting on its behalf and/or under its mandate from taking possession of, inhibiting, alienating, dealing in or with, disposing of, trespassing, issuing a release order and/ or in any other manner interfering with the consignment in container number EMCU8848905/40H/EMCRRH1032 and container number TLLU7680483/40H/ EMCRRH1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 09 MP 9 hereinafter referred to as the "suit property") being the subject of Bill of lading No. 081300184431.
 - d. The Plaintiff shall take the subject containers number EMCU8848905/40H/EMCRR1032 and container number TLLU7680483/40H/EMCRRH1042 consisting of 1,000 bags of LDR 05 MP and 1,000 bags of LDR 0-9 MP (hereinafter referred to as the "suit property") under Bill of Lading No. 081300184431 and tranship.
 - e. The Plaintiff to pay Port charges, shipping line charges and other charges the same to the country of origin or as per their order. Statutory dues, which shall be refunded, by the 1st defendant.
 - f. The 1st defendant to bear cost of USD 3,333 together with freight, port charges and other shipping line charges.
 - g. The 1st defendant to bear costs of USD 1,000 each for the 2nd, 3rd and 4th Defendants.
 - h. File is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 20TH DAY OF DECEMBER, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE



JUDGE

In the presence of:

Mr. Muge for Kiandhi and for the 3rd Defendant

Mr. Muthui for interested party Evergreen line.

Sagin for the Plaintiff

Court Assistant - Brian

