

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 245 OF 2018

ILONGO TOKOLE JEAN.....APPELLANT

VERSUS

1. PALLET LOGISTICS LIMITED

2. THE KENYA REVENUE AUTHORITY

3. THE KENYA PORTS AUTHORITY.....RESPONDENTS

DIRECTIONS

1. When the parties attended court on 11/12/2018 to argue an application for stay pending appeal, it was conceded by all that since the major contention in the appeal was that the Defendant/Appellant had not been served with the court papers seeking to convert its transit cargo to home use, I would call for the trial court file pursuant to Article 165 (6) and confirm for myself if there was ever service of the process upon the Appellant

2. I have called for the file and perused it. That perusal reveals that indeed there had not been service upon the Appellant yet the purpose and revealed intention of the proceedings before the trial court was to convert the Appellants' transit cargo for home use to enable the 1st Respondent, as plaintiff at trial, to sell same and recover its dues.

3. To this court, the container and its contents even if on transit was property of the Appellant as consignee and the claim by the 1st Respondent was a legal dispute capable of resolution by the application of the law and the Appellant was entitled to be served so that his rights under article 50 and 40 could be seen to be protected and not contravened.

4. In so far as the Appellant was not served and involved in the dispute resolution before the court, when it was indeed named as a defendant, his right to a fair hearing was violated and I do not hesitate to say that a court process conducted in violation of the right to a fair hearing is invalid, null and void and incapable of bestowing or conferring any right to any person at all. It is in fact unconstitutional and therefore under the provisions of Article 2 (4) of the constitution is invalid to the extent of such violation. I add that all orders made and steps taken pursuant for such proceedings including the conversion for home use were all invalid, null and void.

5. Having said so, I do direct that the file be remitted back to the trial court and allocated to a judicial officer, other than the one who has handled it before, for the plaintiff to serve all pleadings on all the parties concerned to enable the matter be handled in consonance with the rules of the court and the principles of natural justice.

6. I award the costs of the appeal to the Appellant.

Dated at Mombasa this 20th day of December 2018.

P.J.O. OTIENO

JUDGE