



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Case 57 of 2005

SARDAR SINGH VOHRA LTDPLAINTIFF

VERSUS

PACIFIC INTERNATIONAL LINES (PTE) LTD..1ST DEFENDANT

KENYA PORTS AUTHORITY.....2ND DEFENDANT

SUPER FREIGHTERS LTD.3RD DEFENDANT

COMMERCIAL TRANSPORTERS LTD.4TH DEFENDANT

J U D G M E N T

By a plaint dated 11th December 1996, Sardar Singh Vohra Ltd., the plaintiff herein sued: Pacific International Lines P.T.E.) Ltd., through their agents Inchcape Shipping Services (K) Ltd., Kenya Ports Authority, Super freighters Ltd and Commercial Transporters Ltd, being the 1st to 4th Defendants herein, for judgment inter alia follows:

- (i) payment of Kshs, 971,047 on accounting of goods lost or stolen while on carriage from Busan to Nairobi.
- (ii) Costs of the suit
- (iii) Interest

Each of the defendants filed a defence to deny the plaintiff's claim.

The plaintiff's case was closed prematurely when the plaintiff failed to summon the remaining witnesses in support of its case. By that time the plaintiff had only tendered the evidence of one witness. The defendant each did not summon or tender any evidence in support of their defences. This court granted the parties leave to file and rely on written submissions. Ramesh Patel (P.W.1), a Manager with the plaintiff company told this court that the company was involved in the business of import of bicycles. He produced an invoice showing shipment of spares and accessories of bicycles. The invoice is for US Dollars 46,297.39. The invoice shows those items were packed in two containers and shipped in the vessel known as Kotal Maju Maj. 075 on 18th December 1995. P.W. 1 also produced the C.R.F. prepared and issued by S.G.S. The value of the shipment is assessed at US dollars 42,734/10. P.W. 1 also produced the bill of lading issued by the 1st Defendant in which it shows that the 1st defendant received 1032 packages to be shipped to the plaintiff. The arrival advice was given by the 1st defendant's agents in

Kenya, Inchcape Shipping Services (K) Ltd. The possible arrival date was indicated to be on 14.1.1996. P.W. 1 said that once a shipment arrives, the importer whom the plaintiff gives the documents i.e. the bill of lading, C.R.F. and C57 form to the plaintiff's clearing agent i.e. the 3rd defendant herein. Once the ship arrives the containers are handed over to the 2nd defendant who in turn charges handling fees. P.W. 1 further produced the invoice issued by the 2nd defendant for the shipment upon which the plaintiff paid the 2nd defendant for their charges. Once the goods were cleared the 3rd defendant must obtain from the port of Mombasa the release order. The 4th defendants were the transporters who were to pick the two containers from Mombasa for transportation to Nairobi. P.W. 1 also produced the delivery notes issued by the 4th defendant which were not signed by the plaintiff because the plaintiff discovered that some goods were missing. The plaintiff is said to have reported the missing items to its insurer, Tausi Insurance Co. who in turn investigated the loss. P.W. 1 said that when he opened the padlock placed on one of the containers by the 3rd defendant he discovered the same was half full. The door was closed and the insurance Co. was called to assess. The loss was assessed but the report is yet to be produced. The value of the loss is contained in the loss assessor's report. P.W. 1 said that the value of the goods lost is assessed at US Dollars 9869.05 when added to other expenses would come to Kshs.971, 047/-.

The above is the evidence tendered by P.W.1. He was not cross-examined to determine the veracity of his evidence. The loss assessor's report which fixed the loss at Kshs.971,047/- was only marked as MFI 2 but not produced as an exhibit in evidence. Courts will not attach much weight to the evidence of a witness who has not been cross-examined. I refer to Halbury's Laws of England 4th Edition Vol. 17 para 277 which states as follows:

“Any party is entitled to cross-examine any other witness who gives evidence and his witness, and no evidence affecting a party is admissible against the party unless the later has had an opportunity of testing its truthfulness by cross-examination.”

P.W. 1 was not availed for cross-examination. I have considered the able submissions of learned counsels from both sides. It is clear that the plaintiff had accused the 1st defendant on the basis that it carried the goods on its vessel from Shanghai china to Mombasa and discharged the goods to the 2nd defendant's custody. It also accused the 2nd defendant on the basis that the goods were lost while in its custody. The 3rd defendant is alleged to have cleared the goods and removed them from the 2nd defendant's custody took them to his own warehouse and then handed over to the 4th defendant. I have considered the aforesaid allegations and all those contained in the plaint. At best the same remain as mere allegations in the absence of credible evidence. The plaintiff has miserably failed to prove its claim against all the defendants. There is no evidence showing how the loss of Kshs.971,047/- was arrived at in view of the non-production of the documents prepared by the loss assessor.

For the above reasons I dismiss the plaintiff's suit with costs to the defendants.

Dated and delivered at Mombasa this 23rd day of June 2008.

J. K. SERGON

J U D G E

In open court in the presence of Miss Anita Shah for the plaintiff

Kinyanjui for the defendants.