



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 564 of 2006

GEORGINA NGINA.....

PLAINTIFF

VERSUS

INTER FREIGHT EAST AFRICA LTD.....

.....DEFENDANT

RULING

The applicant entered into an agreement with the respondents subsidiary World Freight SARL Kigali for the transportation of house hold goods from Kigali to her house in Kilimani Nairobi. The consideration was \$642 USD. The plaintiff duly paid for the carriage of her goods on 4TH May 2006 to the defendants subsidiary World Freight who collected the goods for shipment and received the payment when the goods arrived in Nairobi and received by the defendant as the agent of World Freight SARL, the defendant declined to release them.

On 30th May 2006 the plaintiff filed a suit against the defendant seeking orders for immediate release of the goods plus general damages for breach of contract.

Simultaneously with the plaint the plaintiff brought a Chamber Summons expressed to be brought under Order XXXIX Rule 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking orders for the immediate release of her goods unconditionally plus costs. The matter was filed under Certificate of Urgency. Mrs. Rashid counsel for the applicant appeared before the Duty Judge who certified the matter urgent and the Judge directed that the respondent be served and the application to be heard inter partes on 7th June 2006.

When the matter came up for hearing inter partes on 7th June 2006 the counsels intimated that there was a likelihood of settlement and the parties requested to be given up 9th June 2006 to see if they could settle and if not the matter do proceed. But on 30th May 2006 the defendant filed a Preliminary Objection.

The defendants preliminary objection is based on the following grounds:

1. The Certificate of Urgency dated 30th May 2006 does not lie.
2. The application dated 29th May 2006 does not lie under Order XXXIX Rule 2 of the Civil Procedure Rules.

3. This Honourable Court has no jurisdiction to hear and determine this matter because the Cause of Action is in contract which was entered into between the plaintiff and World Freight SARL in Kigali Rwanda outside the jurisdiction of this court.

The issue of whether or not this matter properly came under Certificate of Urgency cannot be challenged at this stage. When a party comes to court under Certificate of Urgency and puts the matter before a Judge who is satisfied that the matter is urgent and certifies the same urgent that order remains in force until and an application is filed by aggrieved party to have it reviewed and discharged. Secondly Mr. Mugambi submitted that the application dated 29th May 2006 does not lie under O.XXXIX Rule 2 as the same seeks mandatory injunction. He referred the court to the case of **BELLE MAISON LTD VS. YAYA TOWERS LTD – HCCC 2225 OF 1992**. He argued that an application for mandatory injunction cannot be brought by way of Notice of Motion and not Chamber Summons. Lastly he submitted that since the Agreement between the plaintiff and the defendant was entered into in Kigali Rwanda, this court has no jurisdiction to entertain this suit.

Mrs. Rashid in reply submitted that since in her Chamber Summons dated 29th May 2006 is expressed to be brought under XXXIX Rule 2 and Section 3A of the Civil Procedure Act, the same is properly before the court. On the issue of jurisdiction she submitted that although the contract was entered into in Kigali between the plaintiff and World Freight SARL the performance was to be completed by their agent the defendant herein who are in Nairobi.

The documents accompanying the goods indicate Agent's Name and Address as Inter freight EA LTD of P.O. Box 42106 NAIROBI and customer:- **GEORGINA NGINA OF KILIMANI NAIROBI**.

As regards the issue whether or not this application is properly before this court. I say that it is. Even the authority quoted by counsel – **HCCC NO. 2225 OF 1992 – BELLE MAISON LTD VS. YAYA TOWERS LTD** the application was brought under Order XXXIX THE civil Procedure Rules and Section 3A of the Civil Procedure Act and a mandatory injunction was granted.

On the issue of the court's jurisdiction to entertain this suit, it is not disputed that the agreement between the plaintiff and World Freight was made in Kigali but the plaintiff's goods were directed to the defendant in Nairobi and the documents accompanying the goods show clearly that the defendant as the agent of World Freight was handling the said goods on behalf of the plaintiff whose name was indicated as the customer. So the defendant is properly sued as the agent of the principal.

For the above reasons the defendants preliminary objection is dismissed with costs to the plaintiff.

Dated and delivered at Nairobi this 14th day of June, 2006.

J.L.A. OSIEMO

JUDGE