



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 134 OF 2003**

**MAGOT FREIGHT SERVICES LTD.....PLAINTIFF**

**V E R S U S**

**P & O NEDLLOYD EAST AFRICA LTD.....DEFENDANT**

**R U L I N G**

In this case the Plaintiff filed suit as Agents of Companies claiming:-

- a) Mandatory injunction compelling the Defendant to deliver to the Plaintiff the Release Orders for goods imported vide Container No. POCU 0405171.
- b) General damages for loss of business. c) A refund of customs warehouse rent paid up to the date of release of the imported goods.
- d) Costs of this suit. The present application, Plaintiff prays for:-

(1) That the Defendant be directed to execute, certify, endorse and deliver to the Plaintiff in accordance with the custom of trade all necessary documents as will enable the Plaintiff to process, clear and take possession from the Port of Mombasa of all the assorted goods as more particularly described in a Bill of Lading No. PONLDXB 1900 3680 81 and 82 respectively that came aboard Vessel Emirate Star in Container No. POCU 0405171 and which are the subject matter of this suit.

(2) That the Defendant be directed to meet, settle in full any and all warehouse rent due and owing to Kenya Revenue Authority up till the time all goods which are the subject matter of the suit herein are cleared and released to the Plaintiff. It is not therefore in order to invoke Section 3A and 63 Civil Procedure Act or Order L Civil Procedure Code. These provisions do not provide for final orders to be entered on an application.

Also it is to be noted that the Applicants are relying on Trade Custom. It is not clear which Trade Custom is referred to. Trade Customs are proven by evidence at the trial. Furthermore, the Defendants are claiming lien on the goods for payment of their charges. A lien does not raise a cause of action. The owner of the goods collects then after payment of the charges.

There is also raised the issue that the Plaintiffs are suing on behalf of disclosed principals. The Powers of Attorney are documents of appointments of Agents. In this case the same were obtained after suit was filed.

Again, it is shown in the Bill of Lading that the Defendant was the carrier who discharged the container into the custody and care of K.P.A. on 13/10/2002 and not until 8/5/2003 did a representative notified Defendant that the Plaintiff company was appointed agents for the owner at which time delivery for stripping charges, and

demurrage charges had accrued. The Plaintiff refused to pay demurrage charges which at that time was Kshs.195,358/25.

The issue whether the demurrage charges are payable or not is triable issue to be proved by evidence. No such proof has yet been shown.

In fact the rights of parties under the reverse of Bill of Lading are disputed.

In view of what is stated above, I do not find that requirements are satisfied to grant orders sought.

The application is dismissed with costs.

Dated this 25th day of June, 2004.

JOYCE KHAMINWA

J U D G E