

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 228 OF 2001

VEHICLE IMPORT SOLUTIONS LTD. PLAINTIFF
VERSUS
THE COMMISSIONER OF CUSTOMS & EXCISE 1ST DEFENDANT
THE KENYA PORTS AUTHORITY 2ND DEFENDANT
SEAFORTH OF MOMBASA LTD. 3RD DEFENDANT
SEAWAYS KENYA LTD. 4TH DEFENDANT

RULING

I am not satisfied that the plaintiff is properly authorised to file this suit as against the defendants on behalf of the 5 individuals named in the Bills of Lading and for that reason alone if for no other, I do not consider that the plaintiff has a prima facie case with a probability of success. That is a little unfortunate as the case of Francis Nzioka – Mitsubishi Pajero – as he seems to be the only one where in all probability payment in full was made in time.

The plaintiff was the consignee of the Mitsubishi Lancer but seems not to have paid in full within 14 days of arrival in Mombasa – namely 25th July, 2000.

The evidence of payment is difficult to follow in part because the plaintiff had a running account with IBC Japan so that there were not just 6 vehicles in one consignment but other vehicles in other consignments. I am unable to unravel exactly what was paid and for which vehicle as it may well be IBC Japan were appropriating payments to previous vehicles on consignment and not to these vehicles. If the plaintiff wanted to ensure that a payment was appropriated to a particular vehicle, it has to say so at the time of payment; if it does not do so and it did not, on the evidence before me, IBC has the right to appropriate a payment to other vehicles or consignments. Even on the plaintiff's own evidence, its payments were seriously late.

A mandatory injunction can only be granted in a clear case; this case is very far from clear.

While I appreciate that the plaintiff will suffer considerable losses, it does seem to me that damages, if they can be proved, are an adequate remedy.

On balance of convenience, it seems imperative to me that vehicles that have been sitting on the two docks for 10 months should be released as soon as possible. An injunction would merely keep them there for another 10 months to nobody's advantage.

For those reasons, I dismiss this application with costs now without calling on the defendants to reply.

Dated at Nairobi this 10th day of April, 2001.

P. J. HEWETT

JUDGE