



**Celanese Sales Germany GMBH v Monster Beverage (Uganda) Limited & 4 others  
(Civil Case 026 of 2018) [2025] KEHC 4027 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4027 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL CASE 026 OF 2018  
F WANGARI, J  
MARCH 6, 2025**

**BETWEEN**

**CELANESE SALES GERMANY GMBH ..... PLAINTIFF**

**AND**

**MONSTER BEVERAGE (UGANDA) LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GLOBAL OUTSOURCING LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**PATRICK KASOZI ..... 3<sup>RD</sup> DEFENDANT**

**RICHARD RANTALA ..... 4<sup>TH</sup> DEFENDANT**

**KENYA PORTS AUTHORITY ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff, is a limited company duly incorporated in Germany engaging inter alia, in the manufacture of ingredients for food, beverage, and pharmaceutical industry including potassium sorbate and sorbic acid business. The 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant are companies purported to be companies incorporated in the Republic of Uganda. The 3<sup>rd</sup> Defendant and 4<sup>th</sup> Defendant fraudulently presented themselves to the Plaintiff company as the representative of the 2<sup>nd</sup> Defendant and 1<sup>st</sup> Defendant respectively, for purposes of buying potassium sorbate on behalf of the 1<sup>st</sup> Defendant, a company which was said to be a subsidiary of Monster Beverage Corporation, a reputable company in America.
2. On or about 21/08/2017, the Plaintiff received an order purportedly from Monster Beverage Company for 104 metric tonnes of Nutrinova® potassium sorbate valued at Euro 501,270.00, where the goods were to be shipped to the 1<sup>st</sup> Defendant as the subsidiary of the American company.



3. The goods were eventually shipped to the 1<sup>st</sup> Defendant in 5 containers No. TCLU4292824, EMCU9821107, BEAU4387148, TCLU7844948 and BEAU4367326. Payment was to be done 30days after the Bill of Lading by Monster Beverage Corporation.
4. Thereafter, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants cut communication with the Plaintiff. The Plaintiff contacted the American Company in pursuit of payment only for them to realize that the said company had not placed any orders there was no subsidiary company as alleged. The 4<sup>th</sup> Defendant was also not an employee of the American company.
5. By the time the Plaintiff realized that there was fraud involved, the 5<sup>th</sup> Defendant had already caused the goods in 3 containers, to be released from the port of Mombasa and received by the 1<sup>st</sup> Defendant in Uganda. Only 2 containers that arrived at the Port of Mombasa on 22/10/2017 had not yet been released to the Plaintiff. They are containers no. TCLU7844948 and BEAU4367326.
6. The Plaintiff reported the fraud to the 5<sup>th</sup> Defendant, a state corporation operating the Port of Mombasa, requesting them to detain the said containers pending further investigations in the matter. The 5<sup>th</sup> Defendant refused to detain the said goods and threatened to release them to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants upon payment of duty.
7. The fraud report was also made to the Kenya Police, German police, Uganda police, Uganda Revenue Authority and the DCI.
8. The Plaintiff filed this suit against the Defendants via the Plaint dated 29/03/2018 seeking for orders of permanent injunction against the 1<sup>st</sup> – 4<sup>th</sup> Defendants restraining them from dealing in any way with the goods in the 3 containers in their custody, deliver up the said containers to the Plaintiff and if the goods have already been sold, and damages amounting to Euro 501,270.00
9. The claim against the 5<sup>th</sup> Defendant was a permanent injunction restraining it to transfer, distributing, alienating or disposing the 2 containers under its custody. The Plaintiff prayed that the 5<sup>th</sup> Defendant be compelled to release the said containers to the Plaintiff.
10. The Defendants were served with the Summons to Enter Appearance but failed to do, save for the 5<sup>th</sup> Defendant who entered appearance but failed to file the Statement of Defence. Interlocutory Judgment was entered against the Defendants and matter fixed for formal proof.
11. The 5<sup>th</sup> Defendant filed a Notice of Motion dated 28/01/2020 seeking to set aside the interlocutory judgment against it, and it be allowed to file its Statement of Defence. The application was found to have no merits and was dismissed.
12. When the matter came up for hearing by way of formal proof on 17/10/2018, the court was informed that the Plaintiff had filed a Notice of Motion dated 11/10/2018 seeking to have the Affidavits sworn by Michael Sauer and Martin Fischer in the Notice of Motion dated 29/03/2018 be adopted as the evidence on the part of the Plaintiff. The Defendants having not participated in the proceedings, the application was allowed as prayed. The said Affidavits reflected the contents of the Plaint as summarized above.

## Analysis

13. Whereas the Defendants failed to defend the suit, the burden of proof still remains with the Plaintiff. The Court of Appeal in the case [Charterhouse Bank Limited \(under Statutory Management v Frank N.](#)



Kamau (2016) eKLR had occasion to consider the burden of proof of the plaintiff where the defendant failed to adduce evidence. The court stated in that case: -

“We would therefore venture to suggest that before the trial court can conclude that the plaintiff’s case is not controverted or is proved on a balance of probabilities by reason of the defendant’s failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant. Where the defendant has subjected the plaintiff or his witnesses to cross-examination and the evidence adduced by the plaintiff is thereby thoroughly discredited, judgment cannot be entered for the plaintiff merely because the defendant has not testified. The plaintiff must adduce evidence, which in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the plaintiff is not entitled to judgment merely because the defendant has not testified.”

14. This court shall consider the Plaintiff’s case on merits. It is a fact that the Defendants save for the 5<sup>th</sup> Defendant were fraudsters who passed as genuine buyers of the Plaintiff’s goods. They managed to take three (3) consignments save for the two (2) consignment under the custody of the 5<sup>th</sup> Defendant.
15. In Black’s Law Dictionary (Eighth edition) fraudulent misrepresentation is defined as;

“A false statement that is known to be false or is made recklessly without knowing or caring whether it is true or false and is intended to induce a party to detrimentally rely on it”.
16. The Plaintiff acted on the 1<sup>st</sup> – 4<sup>th</sup> Defendants misrepresentation by shipping the goods. They have already suffered loss consignments which were cleared by the 4<sup>th</sup> Defendant prior to the discovery that this was a fraudulent transaction on the part of the fraudulent Defendants. Particulars of fraud were pleaded and proved. (see the case of Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR).
17. Having proved fraud, I find that the Plaintiff has proved its case on a balance of probabilities. By denying the Plaintiff the reliefs sought, would be condemning it to further loss.
18. It is now over 7 years since the cause of action arose. It is not expected that the 1<sup>st</sup> – 4<sup>th</sup> Defendants would still be in possession of the goods in question. The granting of permanent injunction against them would just be an academic exercise. The most befitting order against them would be that of compensation for the value of the goods taken.
19. The 5<sup>th</sup> Defendant having not defended the suit, it is still deemed that the 2 remaining containers are still in its custody hence the appropriate relief in favour of the Plaintiff shall apply.
20. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the Civil Procedure Act. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others [2013] eKLR.
21. In the present circumstances, I see no reason why I should deny the Plaintiff costs of the suit.
22. The upshot is that this court makes the following orders: -
  - i. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are jointly and severally liable to pay damages amounting to Euros. 501,270.000 from date of filing suit.



- ii. That the 5<sup>th</sup> Defendants do release goods in containers no. TCLU7844948 and BEAU4367326 and thereafter to waive charges due to it for the period the containers were in their custody.
- iii. That costs of the suit to be borne by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6<sup>TH</sup> DAY OF MARCH, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of: -

MS Omondi & MS Gathimba Advocate for the Plaintiff

N/A by the 5<sup>th</sup> Defendant

M/S Salwa, Court Assistant

