



**Triostar Logistics Limited & 4 others v Kenya Ports Authority & 2 others  
(Petition E013 of 2024) [2024] KEHC 4570 (KLR) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4570 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E013 OF 2024**

**OA SEWE, J**

**APRIL 15, 2024**

**IN THE MATTER OF ARTICLES 1, 2(1), 3(1), 10, 19, 20,  
21, 23, 47, 50, 52, 258 & 259 OF THE CONSTITUTION**

**BETWEEN**

**TRIOSTAR LOGISTICS LIMITED ..... 1<sup>ST</sup> PETITIONER  
BEMACY FREIGHTERS LIMITED ..... 2<sup>ND</sup> PETITIONER  
UTMOST FREIGHT MASTERS LIMITED ..... 3<sup>RD</sup> PETITIONER  
PALM FREIGHTERS LIMITED ..... 4<sup>TH</sup> PETITIONER  
JUBILEE CLEARING & FORWARDING ..... 5<sup>TH</sup> PETITIONER**

**AND**

**KENYA PORTS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT  
MINISTER FOR INTERIOR AND NATIONAL COORDINATION .... 2<sup>ND</sup>  
RESPONDENT  
DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before the Court for determination is an aspect of the Notice of Motion dated 3<sup>rd</sup> April 2024. The application was filed by the petitioners under rule 23 of the [Constitution \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#) for orders that:
  - (a) Spent
  - (b) Pending the hearing and determination of the application, there be a conservatory order restraining the respondent whether through its agents, officers, employees or any other person



acting on their authority, from interfering with any shipping instructions issued by the petitioners' principals for any cargo entrusted to the petitioners.

- (c) Pending the hearing and hearing and determination of the Petition, there be a conservatory order restraining the respondent whether through its agents, officers, employees or any other person acting on their authority from interfering with any shipping instructions issued by the petitioners' principals for any cargo entrusted to the petitioners.
  - (d) Costs of the application be provided for.
2. The application was premised on the grounds that the petitioners, as clearing and forwarding agents, assist cargo owners to clear their cargo through customs at the Port of Mombasa. They averred that, at the time of importation, importers are required to nominate a clearing and forwarding agent of their choice as well as a Container Freight Station that will warehouse their cargo pending clearance. Such details, they averred, are then set out in the Bill of Lading, such that, once the cargo is delivered at the Port of Mombasa, the same is promptly discharged and warehoused pending clearance and delivery to the consignee.
  3. The petitioners contended that, as from February 2024, the respondent has been interfering with the instructions given by their principals by overriding those instructions as to the choice of clearing and forwarding agents as well as the preferred CFS without any prior consultation with them or their principals. They complained that this practice has occasioned not only undue delays in the clearing of cargo but also in increased handling costs. The petitioners asserted therefore that the respondent has no legal authority or powers to unilaterally change the shipping instructions issued by their principals; and therefore that their actions are unconstitutional.
  4. It is on account of the foregoing that the petitioners prayed for conservatory orders in terms of Prayer 2 of their application pending the hearing of the application; and ultimately the Petition. The application was supported by the affidavit of Abdiaziz Muktar Hirsi, the Managing Director of the 1<sup>st</sup> petitioner. Annexed to that affidavit are copies of some of the agreements between the petitioners and their principals as well as particulars of cargo diverted by the respondent in the months of February and March 2024.
  5. The respondent opposed the application and relied on the affidavit sworn by Mr. Amakobe, Advocate, on 9<sup>th</sup> April 2024. The gist of that affidavit is the assertion that several suits have been filed in connection with the same cause of action by clearing and forwarding agents and CFSs, including Nairobi High Court Commercial Petition No. E002 of 2023: *Autoports Nairobi Freight Station Limited & others v the Cabinet Secretary, Ministry of Roads and Transport & others*, in which a ruling was delivered dated 18<sup>th</sup> August 2023. Thus, Mr. Amakobe averred that a conservatory order was thus issued restraining the respondents from interfering with the current arrangements whereby general and containerized cargo destined for South Sudan through the Port of Mombasa is exclusively handled and stored by either of the petitioners in Nairobi High Court Commercial Petition No. E002 of 2023 pending the hearing and determination of the said Petition.
  6. Mr. Amakobe further deposed that following the delivery of the ruling dated 18<sup>th</sup> August 2023 the respondent began taking steps to implement the orders issued therein; but its efforts were met with resistance from the other CFSs/Forwarders who proceeded to file various suits against it at the High Court in Mombasa, touching on the same subject matter as the instant Petition. He listed the 6 suits at paragraph 8 of his Replying Affidavit and annexed copies of some of the pleadings filed in that regard as Annexure KPA-3. He further pointed out that the High Court at Mombasa has since ordered that three



of the suits be transferred to Nairobi for hearing and determination alongside Nairobi High Court Commercial Petition No. E002 of 2023, after declining to issue conservatory orders.

7. At paragraph 13 of his affidavit, Mr. Amakobe explained that the High Court at Nairobi has already given directions with a view to an effectual disposal of all the related suits and fixed them for highlighting on 27<sup>th</sup>, 28<sup>th</sup> and May 29, 2024. He therefore posited that, unless this suit is promptly transferred to Nairobi for disposal alongside Nairobi High Court Commercial Petition No. E002 of 2023 there is a likelihood of conflicting orders being issued by courts of concurrent jurisdiction. He filed a Supplementary Affidavit sworn on 10<sup>th</sup> April 2024 to properly align the documents filed on behalf of the respondent and prayed that the said affidavit be deemed duly filed.
8. The parties' disputation was limited to Prayer 2 of the application, and their respective positions were urged orally on 11<sup>th</sup> April 2024. On behalf of the petitioners, Mr. Mugambi pointed out that nowhere in the Petition have they made reference to cargo destined for South Sudan; which is the crux of the other suits. He submitted that it is the respondent that is alleging that the subject cargo is destined for South Sudan without any proof of that allegation. He emphasized that the Petition is challenging the unilateral variation of the instructions given by the petitioners' principals without any reference to them or their principals and therefore their prayer is for conservatory orders restraining the respondent from continuing with the variation pending hearing of the Petition.
9. Hence, counsel made reference to page 43 of the respondent's annexures where it expressly conceded that the nomination of the forwarders, the CFSs and the mode of transport of cargo is at the discretion of the importers. He accordingly prayed for the issuance of orders in terms of prayer 2 pending the hearing and determination of the application.
10. On his part, Mr. Amakobe insisted that this matter has everything to do with the similar suits mentioned in his Replying Affidavit. He made reference to Annexure 1 to the Petition for proof that the petitioners are agents to other clearing and forwarding agents in South Sudan; and that the subject consignments of cargo are headed to South Sudan. He accordingly submitted that, since there is already a ruling in rem in place issued by a court of concurrent jurisdiction on how the goods are to be handled, Prayer 2 ought to be declined for now.
11. Having given due consideration to the documents presented herein by both sides, it is plain that nearly all of the documents relied on by the petitioners, particularly the agency agreements at pages 2-36, 38-40, 44, 45 and 48 of the annexures to the Supporting Affidavit are in connection with consignees based in Juba, South Sudan. There are also numerous letters of appointment in that regard; and therefore there is no gainsaying that the bulk of the cargo that is the subject of this Petition were or are destined for South Sudan. Having looked at the Ruling of Hon. Mabeya, J. dated 18<sup>th</sup> August 2023 and the orders issued thereafter, I am satisfied that it is in the interest of justice to decline prayer 2 for now; which I hereby do.
12. Accordingly, it is hereby ordered that the application dated 3<sup>rd</sup> April 2024 be responded to comprehensively with a view of hearing and determination on its merits.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 15<sup>TH</sup> APRIL 2024

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**OLGA SEWE**

**JUDGE**



