



Careglove Global SDN BHD v Ian Trowel representing to be Johnson Matthey (U) Limited & 4 others (Civil Suit E012 of 2024) [2024] KEHC 9092 (KLR) (24 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E012 OF 2024
JK NG'ARNG'AR, J
JULY 24, 2024**

BETWEEN

CAREGLOVE GLOBAL SDN BHD PLAINTIFF

AND

**IAN TROWEL REPRESENTING TO BE JOHNSON MATTHEY (U)
LIMITED 1ST DEFENDANT**

KATOSI MARTIN 2ND DEFENDANT

GULF BADR GROUP (KENYA) LIMITED 3RD DEFENDANT

KENYA REVENUE AUTHORITY 4TH DEFENDANT

KENYA PORTS AUTHORITY 5TH DEFENDANT

JUDGMENT

1. The Plaintiff through a Plaint dated 7th March 2024 prayed for judgment against the 1st and 2nd Defendants in respect to ‘the Goods’ described as surgical latex gloves shipped by the Plaintiff under various shipping documents, inter alia, Bill of Lading No. EGLV 091330622794 dated 9th January 2024 under container number TXGU6078468, Bill of Lading No. EGLV 091330622824 dated 17th January 2024 under container No. EITU1803633, and Bill of Lading No. PKLMBA112127-PP dated 6th February 2024 under container numbers FCIU8433286 and MSCU7837295 summarized as follows: -
 - a. A declaration that the legal title in the Goods subsists and/or rests with the Plaintiff.
 - b. A declaration that the Plaintiff, as the legitimate owner of the Goods is entitled to claim and take possession of the goods, whether by itself or its directors, officers, employees, servants, agents, successors and/or assigns.



- c. A declaration that the Plaintiff is entitled to exercise its right of lien, right of retention and/or right of stoppage in relation to the Goods in view of the non-payment by the First and Second Defendants and/or Johnson Matthey UG.
 - d. A permanent injunction restraining the First and Second Defendants and/or Johnson Matthey UG whether by themselves, their personal representatives, successors and/or assigns from claiming, receiving, obtaining and/or otherwise taking possession of the Goods whether from the port of Mombasa and/or any other point of collection.
 - e. A permanent injunction restraining the Third, Fourth and Fifth Defendants whether by themselves, their directors, officers, employees, servants, agents, successors and/or assigns from releasing the Goods to the First and Second Defendants and/or Johnson Matthey UG and/or their representatives, successors and/or assigns.
 - f. A permanent injunction restraining the Defendants and/or Johnson Matthey UG whether by themselves, officers, employees, servants, agents, successors, personal representatives and/or assigns from proceeding with any transactions, arrangements, agreements and/or deals, howsoever arising and which are aimed at or have the result of, whether directly or indirectly, alienating, distributing, dissipating, excluding and transferring or otherwise disposing the Goods or the legal title thereof.
 - g. A mandatory injunction directed at the Third, Fourth and Fifth Defendants requiring release of the Goods to the Plaintiff and/or its nominated agents, and/or representatives.
 - h. A permanent injunction restraining the Fourth and Fifth Defendants from enforcing any accrued levies, duties, taxes and/or charges against the Plaintiff in respect of the Goods in view of the fraud by the First and Second Defendants.
 - i. In the alternative to prayer (h) above, a declaration that the Fourth and Fifth Defendants waive any accrued levies, duties, taxes and/or charges against the Plaintiff in respect of the Goods in view of the fraud by the First and Second Defendants.
 - j. Special damages in the sum of USD 545,200 payable by the First and/or Second Defendants or their personal representatives, successors and/or assigns in the event that the Goods are released to the First and/or Second Defendants by the Third, Fourth and/or Fifth Defendants whether by their officers, employees, servants and/or agents.
 - k. General damages as against the First and Second Defendants for fraud, fraudulent misrepresentation, inducement, and conspiracy to defraud the Plaintiff.
 - l. Interest
 - m. Costs
2. The Plaintiff averred that the First Defendant is a male adult believed to be a national or citizen of England, the Second Defendant is a male adult believed to be a national or citizen of Uganda, the Third Defendant is a limited liability company incorporated and doing business in Kenya, the Fourth Defendant is a state corporation established under the *Kenya Revenue Authority Act* No. 2 of 1995 to assess, collect and account for all tax revenue on behalf of the Government of Kenya in accordance with Kenyan law and the Fifth Defendant is a state corporation established under the *Kenya Ports Authority Act* to inter alia manage and operate the Port of Mombasa and all scheduled seaports along Kenya's coastline.



3. The cause of action in the Plaint is that on or about 13th October 2023, the First Defendant approached the Plaintiff via email seeking to purchase products from the Plaintiff allegedly on behalf of Johnson Matthey PLC. That by the email of 2nd November 2023, the Plaintiff was led by the First Defendant to believe that he was an employee, agent and/or representative of Johnson Matthey PLC and that the company had a branch in Uganda. That on or about 2nd November 2023, the First Defendant made an order via email to the Plaintiff, allegedly on behalf of Johnson Matthey PLC, and posing as its purchasing manager for surgical latex gloves worth USD 545,200. That the Plaintiff accepted the order on conditions that Johnson Matthey UG would be the consignee of the order, the Second Defendant would be the contact person for the consignee, Johnson Matthey UG, the goods would be shipped to Johnson Matthey UG in four (4) containers from Malaysia through the Port of Mombasa, and the payment was to be made by Johnson Matthey PLC immediately upon receipt of the original shipping documents.
4. That the Plaintiff dispatched the goods on the Plaintiff's shipper, Evergreen Marine (Asia) Pte. Ltd. That on 2.2.2024, the Plaintiff's bank – HSBC Bank sent the shipping documents to Standard Bank, South Africa, the First Defendant's nominated bank but the address provided by the First Defendant was fake and not Standard Bank's address. That the First Defendant failed, omitted or otherwise neglected to make payment for the goods. That the Plaintiff through its employees established that the First and Second Defendants were not acting on behalf of or otherwise with the authority of Johnson Matthey PLC. The Plaintiff had therefore been defrauded by the First and Second Defendants and the Plaintiff has suffered loss and/or damage amounting to USD 545,200 being the value of the goods. That to try and subvert the fraud, the Plaintiff sought to intercept release of the goods to the First and Second Defendants, currently held at the port of Mombasa.
5. The Plaintiff duly served the Defendants with Summons and Pleadings as indicated by an Affidavit of Service sworn by Wycliffe Ihonga on 12th April 2024.
6. The 3rd Defendant in their statement of defence where they denied each and every allegation contained in the Plaint save for paragraphs 1, 2, 3, 4, 5, and 6 of the Plaint as the same are merely descriptive of the parties. The 3rd Defendant stated that the Plaintiff entered into an agreement with the First and Second Defendants on 2nd November 2023 for the purchase of surgical latex gloves. That the Plaintiff dispatched the goods for to the 1st Defendant on the Plaintiff's shipping line, Evergreen Marine (Asia) PTE Ltd and pursuant to instructions by the Plaintiff, the 3rd Defendant delivered the subject goods under containers No. EITU1803633 and TXGU6078468 awaiting clearance and handing over to the consignee. That the 3rd Defendant having fully discharged its obligation under the Bill of Lading, the Plaintiff has no claim whatsoever and is put to strict proof thereof.
7. The First and Second Respondents neither entered appearance nor filed their statement of defence. The Plaintiff therefore filed their Request for Judgment dated 25th April 2024 seeking for interlocutory judgment against the First and Second Defendants as prayed in the Plaint dated 7th March 2024.
8. The matter came up for formal proof hearing on 11th July 2024 where Loo Teck Looi, the Director of the Plaintiff testified, he was cross examined and the Plaintiff's case was closed.
9. This court has considered the pleadings and oral evidence by the Plaintiff's witness and the issue for determination is whether the Plaintiff has met the threshold for grant of the orders sought.
10. It is not in dispute that the Plaintiff entered into an agreement with the First Defendant allegedly on behalf of Johnson Matthey PLC for the supply of surgical latex gloves worth USD 545,200. It is also not in dispute that the Plaintiff shipped the said goods from Malaysia in 4 containers, which were to



go through the Port of Mombasa to the Second Defendant in Uganda. It is also not in dispute that there was fraudulent misrepresentation and conspiracy to defraud the Plaintiff on the part of the part of the First and Second Respondents. The Plaintiff has therefore come to this court to try and subvert the fraud.

11. The plaintiff is entitled to reliefs sought where the defendant has breached a contract as was held in the case of *Hadley v Baxendale* (154) 9. Exch 214 where Anderson P at page 354 stated: -

“Where two parties have made a contract which one of them has broken the damages which the other ought to receive should be such as may fairly and reasonably be considered either as arising naturally i.e. according to the usual course of things, from such breach itself, or such as may reasonably be supposed to have been in contemplation of both parties at the time they made a contract as the probable result of a breach of it.”

12. The Plaintiff has as a result of the fraudulent transaction prayed for declarations, permanent injunction, mandatory injunction, special damages, general damages, interests and costs.

13. On permanent injunction, it was held in the case of *Mburu v Kibara & 2 others (Environment & Land Case 237 of 2021)* [2022] KEELC 3226 (KLR) (28 July 2022) (Ruling) that: -

“... permanent injunction fully determines the right of the Parties before the Court and is normally meant to perpetually restrain the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. This Court has the powers to grant the Permanent Injunction under sections 1A, 3 & 3 A of the Civil Procedure Code if it feels the right of a Party has been fringed, violated and/or threatened as the Court cannot just seat, wait and watch under these given circumstances ...”

14. Further, in the case of *Malier Unissa Karim v Edward Oluoch Odumbe* (2015) eKLR, the court set out circumstances under which mandatory injunction can be granted as follows: -

“The test for granting a Mandatory Injunction is different from that enunciated in the *Giella v Cassman Brown* case which is the locus classicus case of Prohibitory Injunctions. The threshold in Mandatory is higher than the case of Prohibitory Injunction and the Court of Appeal in the case of ‘*Kenya Breweries Ltd v Washington Okeyo* (2002) EA 109’ had the occasion to discuss and consider the principles that govern the grant of a Mandatory Injunction was correctly stated in Vol. 24 Halsbury Laws of England 4th Edition Paragraph 948 which states as follows: -

“A Mandatory Injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However, it the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can be easily remedied, or if the Defendant attempts to steal a match on the Plaintiff, a Mandatory Injunction will be granted on an Interlocutory application”.

15. On costs, the court has discretion and Section 27 (1) of the *Civil Procedure Act* provides that costs follow events.

16. This court finds that the present suit succeeds and hereby makes the following orders: -

- a. A declaration that the legal title in the Goods subsists and/or rests with the Plaintiff.



- b. A declaration that the Plaintiff, as the legitimate owner of the Goods is entitled to claim and take possession of the goods, whether by itself or its directors, officers, employees, servants, agents, successors and/or assigns.
- c. A declaration that the Plaintiff is entitled to exercise its right of lien, right of retention and/or right of stoppage in relation to the Goods in view of the non-payment by the First and Second Defendants and/or Johnson Matthey UG.
- d. A permanent injunction restraining the First and Second Defendants and/or Johnson Matthey UG whether by themselves, their personal representatives, successors and/or assigns from claiming, receiving, obtaining and/or otherwise taking possession of the Goods whether from the port of Mombasa and/or any other point of collection.
- e. A permanent injunction restraining the Third, Fourth and Fifth Defendants whether by themselves, their directors, officers, employees, servants, agents, successors and/or assigns from releasing the Goods to the First and Second Defendants and/or Johnson Matthey UG and/or their representatives, successors and/or assigns.
- f. A permanent injunction restraining the Defendants and/or Johnson Matthey UG whether by themselves, officers, employees, servants, agents, successors, personal representatives and/or assigns from proceeding with any transactions, arrangements, agreements and/or deals, howsoever arising and which are aimed at or have the result of, whether directly or indirectly, alienating, distributing, dissipating, excluding and transferring or otherwise disposing the Goods or the legal title thereof.
- g. A mandatory injunction directed at the Third, Fourth and Fifth Defendants requiring release of the Goods to the Plaintiff and/or its nominated agents, and/or representatives.
- h. Special damages in the sum of USD 545,200 payable by the First and/or Second Defendants or their personal representatives, successors and/or assigns in the event that the Goods are released to the First and/or Second Defendants by the Third, Fourth and/or Fifth Defendants whether by their officers, employees, servants and/or agents.
- i. The First and Second Defendants are hereby directed to pay to the Plaintiff General Damages in the amount of USD 50,000 for fraud, fraudulent misrepresentation, inducement, and conspiracy to defraud the Plaintiff.
- j. Interest shall accrue on the awards above at court rates from the date of this judgment until payment in full
- k. Cost of the suit to be in the cause.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 24TH DAY OF JULY, 2024.

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J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

Muchiri holding brief for the Plaintiff- present

Weloba for 3rd Defendant present



Isotsa for 4th Defendant present

Court Assistant – Samuel Shitemi=

