



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL, COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. E045 OF 2021

HUICHENG TRADING COMPANY LIMITED.....PLAINTIFF

VERSUS

UNITED STEEL SUPPLY LLC.....DEFENDANT

RULING

1. This is a **Ruling** in respect of the Plaintiff's/Applicant's **Notice of Motion** application dated **26th April, 2021** which is supported by seven grounds on its face and the affidavit of MR. MIAO YU, the Plaintiff's Chief Executive Officer.

2. When the application was placed before me in Chambers on **27th April, 2021**, prayer No.1 and 3 were allowed pending the hearing of the same interparties, so that what is pending determination are prayers No.4 to 7. The said prayers are framed in the following terms:-

(4) Pending the hearing and determination of this suit, there be an order restraining COSCO SHIPPING SPECIALIZED CARRIERS CO. LTD and INCHCAPE SHIPPING SERVICES as well as the KENYA PORTS AUTHORITY whether by themselves, their employees, servants or agents from parting with possession of the Plaintiff's consignment shipped to Mombasa under the Bill of Lading Number WYS58XGMOMO6 to the Defendant's agents.

(5) The shipments under the Bill of Lading number WYS58XGMOMO6 be immediately released to the custody of the Plaintiff and or the Plaintiff's authorized agent and repatriated back to the country of origin or such other destination of the Plaintiff's choice to avoid escalation of demurrage charges, warehouse rent and custom charges.

(6) The OCS, Docks Police Station do supervise and ensure that this order is implemented.

(7) Costs of this application be provided for.

3. It was directed that the application be served upon the Defendant for interparties hearing on **12th May, 2021**, which has happened.

4. I have gone through the record and established that the Defendant was indeed served with the Order dated **27th April, 2021**, Summons to enter appearance dated **28th April, 2021**, Certificate of Urgency, Notice of Motion and Plaint, all dated **26th April, 2021** through their email address, kanotitradingco@gmail.com on **28th April, 2021** as evidenced by the Affidavit of Service sworn on **30th April, 2021** and filed in court on **3rd May, 2021**. Despite having been so served, the Defendant has failed to enter appearance and or file a response to the application and Plaint.

5. **Mr. Wafula**, Counsel for the Plaintiff while praying that the court deems the application as uncontested and allow the pending prayers as presented, gave a brief background of the dispute herein. He stated that the Plaintiff received a Purchase Order on **18th December, 2020** for 200 metric tonnes of Pre-painted Galvalume Steel Coil which order the Plaintiff believed had come from United Steel Supply LLC of Austin Texas USA for the supply to the Defendant in Uganda.

6. The Plaintiff then entered into a contract allegedly procured and executed by the United Steel supply LLC Austin USA and it was agreed therein that payment of the goods would be before the collection of the original Bills of Lading or the title documents. The Defendant in order to obtain the documents, gave to the Plaintiff an address of the paying bank as Standard Bank, South Africa Ltd, and consequently the Plaintiff authorized the release of the Bill of Lading and Title documents to the Defendants.

7. It is also submitted that the Plaintiff then approached the said bank but it declined to make any payments and categorically stated that it had no relationship with the Defendant herein. The Plaintiff then tried to reach United Steel Supply LLC of Austin Texas USA but they similarly denied any relationship with the Defendant. It then dawned upon the Plaintiff that the Defendant was a fraudster impersonating United Steel Supply LLC, USA.

8. With that background, the issue for determination is whether the goods stated should be released to the Plaintiff and or its agents and repatriated back to the country of origin.

9. In my view, the Order sought, although not expressly indicated, is a mandatory injunction directing the shipper as well as Kenya Ports Authority to release the goods back to the Plaintiff.

10. The principles for grant of a mandatory injunctions are clearly discernable that, an Applicant must first satisfy the court that there exists, not only special and exceptional circumstances, but the circumstances should be clear. Secondly, the court must be satisfied that the Applicant has a good case with a likelihood of success

11. I am satisfied that the facts that have been presented before this Court by **Mr. Wafula**, counsel for the Plaintiff/Applicant, satisfy the two tests outlined. The order for the consignment was made fraudulently and the title of the goods could not pass to the Defendants.

12. In considering the Plaintiff's affidavit evidence which has not been challenged or contested by the Defendant, I find that the Plaintiff has proved its claim on a balance of probabilities as is required by law.

13. In the upshot, I find that the Plaintiff has satisfied this Court that it is

entitled to the prayers sought and accordingly make the following orders in its favour;

a) An Order be and is hereby issued directing the shipment under the Bill of Lading Number WYS58XGMOMO6 be immediately released to the custody of the Plaintiff and or the Plaintiff's authorized agent and repatriated back to the country of origin or such other destination of the Plaintiff's choice to avoid escalation of demurrage charges, warehouse rent and custom charges.

b) An Order be and is hereby issued directing the OCS Docks Police Station do supervise and ensure that the Order is implemented.

c) That for avoidance of doubt Order (a) above does not preclude the Plaintiff/Applicant from paying charges which are lawfully due.

d) The Plaintiff/Applicant is also awarded the costs of this application.

It is so ordered.

DELIVERED, DATED and SIGNED VIRTUALLY at MOMBASA this 13th day of MAY, 2021.

D. O. CHEPKWONY

JUDGE