



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT KISUMU**  
**CIVIL SUIT NO. 29 OF 2013**

**BETWEEN**

**HASS PETROLEUM LIMITED.....PLAINTIFF**

**AND**

**CHRISTOPHER OREMO OBANGE T/A MONAKI PETROLEUM.....DEFENDANT**

**AND**

**DAVID MACHARIA MURIITHI.....INTERESTED PARTY**

**JUDGMENT**

1. The plaintiff is a dealer in petroleum products. It filed this suit against the defendant seeking, inter alia, the following reliefs:

- a. This Honourable Court do order that the award of Kshs. 1,151,583/- by Kenya Revenue Authority be paid by the defendant.
- b. General Damages.
- c. Costs

2. According to the plaint, the defendant placed an order for fuel products with the plaintiff on 16<sup>th</sup> October 2013. The fuel was loaded on two trucks, KBS 170B/ZE 0361 and KAZ 4779/ZC 7132 from the Kenya Pipeline Depot, which is a bonded warehouse, destined for Congo through the Busia border post. Unfortunately, one of the trucks did not arrive at the border in Busia causing the plaintiff to report the matter to the police. On 21<sup>st</sup> October 2013, the plaintiff received a demand for Kshs.1,515,553/- in accordance with **section 109 of East Africa Community Customs Management Act, 2004** to pay duty as the fuel intended for export had not reached the border and had probably been diverted for local use.

3. One witness, Stephen Okwengu (PW 1), testified on the plaintiff's behalf. At the material time he was working for the plaintiff in Kisumu. He confirmed the facts as set out in the plaint. According to him, the defendant fraudulently misrepresented to the plaintiff that the fuel was intended for export while he knew it was not. He contended that it was the defendant's obligation to pay the taxes as he is the one who took delivery of the fuel and failed to export it.

4. Although the defendant did not call any witness, he had filed a defence denying the claim in its entirety. In the alternative, he contended that he had contracted with the plaintiff on behalf of Amani Fuels, a company based in Congo and well known to the plaintiff. He pleaded that he had only used his account at the Kenya Commercial Bank to facilitate payment on behalf of the Amani Fuels for the fuel consignment.

5. The interested party as owner of the motor vehicle registration number KBS 170B/ZE 0361 has been contracted to carry fuel from Kisumu. When word reached the plaintiff that the truck had not reached Busia, the plaintiff applied for an injunction impounding the truck. On 19<sup>th</sup> February 2015, Chemitei J., did order that truck to be impounded or the interested party to deposit the sum of Kshs. 1,151, 553/- in court. The said order was discharged on 29<sup>th</sup> August 2016.

6. Although PW 1 referred to documents in his testimony, he did not produce any of them to back up the plaintiff's claim given the nature of the transaction. On this ground alone I would dismiss the claim for lack of evidence.

7. That notwithstanding, several documents were put to PW 1 in cross-examination. These documents were exhibited to an affidavit sworn by PW 1 on 30<sup>th</sup> October 2013 and were as follows:

(1) Exhibit SO-2 - A copy of Form C 17TB CUSTOMS form generated by Kenya Revenue Authority. The document showed that the consignee was *AMANI FUELS C/O HASS PETROLEUM DRC*. The destination of the goods was said to be CONGO and the vessel used was TRUCK KBC170 B/ZE 0361.

(2) Exhibit SO-3 - A payment advice date 17<sup>th</sup> October 2013 showing that the defendant paid the plaintiff USD 29,707 for supply of fuel products

8. PW 1 confirmed that the documents related to this case and that the defendant was not reflected on Exhibit SO-2 as a party to the transaction and that in fact Amani Fuels in DRC was the consignee. On their face, these documents do not show that the defendant had any contractual or fiduciary relationship with the plaintiff.

9. PW1's also testified that the defendant paid for one of the consignments evidenced by Exhibit SO-3. PW 1 told the court that the defendant came to its office and ordered products on behalf of Amani Fuels which already had an account with it. When looked at alongside the defendant's defence, Exhibit SO-3 confirms that it is probably true that the defendant paid the money on behalf of Amani Fuels for the fuel delivery.

10. The totality of this evidence is that the defendant transacted on behalf of a disclosed principal, Amani Fuels. The plaintiff failed to prove that the defendant was liable to settle or meet the demand directed to it by the Kenya Revenue Authority.

11. In short, the plaintiff has not demonstrated that it is entitled to judgment. The suit must fail and is dismissed with costs to the defendant and half costs to the interested party.

**DATED and DELIVERED at KISUMU on this 6th day of October, 2016**

**D. S. MAJANJA**

**JUDGE**

Mr Cheloti instructed by Garane & Associates Advocates for the plaintiff.

Mr Onyango instructed by S. M. Onyango & Associates Advocates for the defendant.

Mr Mungai instructed by Mungai J. N. & Company Advocates for the applicant/interested party.