



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 206 OF 2012

POWER SOLUTIONS LIMITED PLAINTIFF

V E R S U S

CMA CGM KENYA LIMITED 1ST DEFENDANT

AWANAD ENTERPRISES LIMITED 2ND DEFENDANT

KENYA PORTS AUTHORITY 3RD DEFENDANT

RULING

1. The Plaintiff's claim as pleaded in the plaint is for-
 - a. *A declaration that the Plaintiff is not liable to pay storage charges to the Defendants.*
 - b. *For permanent injunction to restrain the Defendant from alienating, dealing with, retaining, holding or remaining with the Plaintiffs consignment comprising of five containers.*
 - c. *General damages for wrongful detention and delay in the delivery of that consignment.*
 - d. *Compensation for the full contract value of the consignment being US Dollars 700,000.*
2. The Plaintiff filed an interlocutory injunction application by a Notice of Motion dated 7th September 2012. What essentially the Plaintiff seeks by that Motion is a mandatory injunction directed to the Defendants to release to the Plaintiff the five containers.
3. The background of this matter is that on 19th March 2012 the Plaintiff procured goods from China. The ship that carried those goods docked at Mombasa Port on 29th April 2012. The Plaintiff alleged that it cleared all the taxes and issued an indemnity letter to the 1st Defendant to enable the goods to be cleared by an agent. When that was done the agent was unable to locate the containers but was informed that they had been transferred to the 2nd Defendant's Container Freight Station (CFS). The Containers were not in the 2nd Defendant's premises because they were not in the manifest issued by the 1st Defendant. Later it transpired that the 1st Defendant had forwarded to the 2nd Defendants manifest which had a page missing. The missing page was where the Plaintiff's containers were reflected. The Plaintiff pleaded in its plaint that by the time the transfer of those containers began they had incurred storage charges payable to the 3rd Defendant.
4. To date those containers have not been released because of non payment of those storage charges.

That is the reason why the Plaintiff by its plaint seeks declaration that it is not liable to pay storage charges. The holding in the case **LOCABIAL INTERNATIONAL FINANCE LTD -VS- AGRO EXPERT & OTHERS THE SEA HAWK [1986] IALL ER 901** which is also in line with the local decisions is that the Court should not grant a mandatory injunction at interlocutory stage unless the case is clear. The Court in that case held as follows-

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases wither where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction (see p 906 d to g and p 907 f, post); dictum of Megarry J in Shepherd Homes Ltd v Sandham [1970]3 All ER at 412 applied.”

5. The Plaintiff in its plaint as stated before seeks a declaration that it should not pay the storage charges. It therefore follows that to order the release of the containers to the Plaintiff would be determining the suit at interlocutory stage. I do not think that in this case that would be desirable. In my view what the parties should seek is an early hearing date of this suit so that any release of the containers is done only after the parties have tendered their evidence.
6. It is for that reason that I grant the following orders-
 - a. **The Notice of Motion dated 7th September 2012 is dismissed and the costs thereof shall be in the cause.**
 - b. **All parties are directed to file paginated documents and all their witness statements within 14 days from this date hereof. Any document or witness statement not filed within that period will not be relied upon at the full hearing without the leave of the Court.**
 - c. **At the reading of this ruling parties will be given a hearing date.**

Dated and delivered at Mombasa this 1st day of November, 2013.

MARY KASANGO

JUDGE