

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 693 of 2008

KRK IMPEX PVT LIMITED..... PLAINTIFF

VERSUS

SAFMARINE KENYA LIMITED 1ST DEFENDANT

ACCORD METALS (KENYA) LIMITED..2ND

DEFENDANT

R U L I N G

On 25/9/2009, the first defendant filed Chamber Summons seeking order that the suit herein be struck out for want of jurisdiction on the grounds set out therein. On the same date the first defendant filed a notice of Preliminary Objection on the grounds set out therein.

The main grounds are that the subject matter of suit (some goods) are now in India and there are litigations going on in India and that the plaintiff, a limited liability company is registered in India and therefore there is no jurisdiction in a Kenyan court to undertake suit in Kenya.

The application was filed late for hearing on 28/9/09. The respondent had no time to prepare opposition documents but he chose to oppose the application all the same. This court made a ruling on 6/3/2009 in connection with certain goods mentioned in Application dated 24/11/08. The court was informed that the goods had already been transported from Kenya and were in a foreign port. The court did notice the situation and made no order except for the payment of the demurrage charges and the claim of undertaking made by the plaintiff.

This court is now requested to make order that the goods which are now said to be in India, out of the jurisdiction of Kenya be released. Counsel for respondent agrees that the goods are now out of the country and nor orders can be made by Kenya courts. There is therefore no order for injunction is in existence regarding the said goods in this court.

The Preliminary Objection is rejected. The costs of this application shall be paid to respondent for the reason that this application was not necessary.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 2nd day of October 2009.

JOYCE N. KHAMINWA

JUDGE