



REPUBLIC OF KENYA



KENYA LAW
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**Kesar Iron and Engineering Works PVT Ltd v Elizwe Trading Company (U) Ltd & 2 others
(Civil Case E073 of 2025) [2025] KEHC 18695 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE E073 OF 2025
G MUTAI, J
DECEMBER 17, 2025**

BETWEEN

KESAR IRON AND ENGINEERING WORKS PVT LTD PLAINTIFF

AND

ELIZWE TRADING COMPANY (U) LTD 1ST DEFENDANT

ELIZWE TRADING CO (SA) LTD 2ND DEFENDANT

KENYA PORTS AUTHORITY 3RD DEFENDANT

JUDGMENT

1. The plaintiff is an Indian company carrying on the business of manufacturing and exporting iron products. The 1st and 2nd defendants are foreign companies. The plaintiff entered into an agreement with the 2nd defendant, vide which it shipped a cargo consisting of municipal castings, also known as manhole covers, to the 1st defendant in Uganda on a cash against documents terms. The shipment was to be made to the 1st defendant in Uganda, while the 2nd defendant would be billed for the goods.
2. Pursuant to the agreement between the parties, the goods were dispatched on 9th July 2025 in container number SEGU 1531145. The shipment comprised municipal castings, shipped pursuant to bill of lading No. 3100099663 through Sea Land Shipping Ltd. The plaintiff dispatched the export documents to Post Bank, Johannesburg, Republic of South Africa, in accordance with the agreed cash against documents terms. Despite sending several SWIFT messages to Post Bank South Africa, the Indian company's bankers, Axis Bank, did not receive payment.
3. It transpired that the 2nd defendant had unlawfully and fraudulently obtained possession of the original shipping documents from Post Bank South Africa, despite not making the requisite payment in accordance with the cash against documents arrangements. The container remains uncollected at the Port of Mombasa under the custody of Sea Land Shipping Ltd and continues to accrue demurrage charges and other incidental costs.



4. The plaintiff seeks an injunction against the 1st and 2nd defendant restraining them from collecting, accessing, claiming, interfering with, or in any other manner whatever, dealing with the container number SEGU 1531145, currently lying at the Port of Mombasa and asserting or purporting to assert any right, title or interest in the said consignment either directly or through any third party.
5. The plaintiff also sought an order compelling the 3rd defendant to release and re-consign container number SEGU 1531145 to the plaintiff, general damages, costs of and incidental to this suit, and further or other reliefs that the court may deem fit to grant.
6. Despite being served, the 1st and 2nd defendant did not appear, nor did they file a defence. Being satisfied that proper service was effected, the matter proceeded as an undefended cause.
7. This matter was heard on 30th November 2025. Due to the nature of the matter, counsel holding brief for Ms Ongaki, to wit Ms Nzisa, proposed that the matter proceed by way of case stated. The court allowed the said application.
8. Ms Nzisa averred that the plaintiff was a victim of fraud, as no payments were made to the plaintiff. She contended that the plaintiff established that the 1st and 2nd defendants were fictitious companies.
9. I have perused the pleadings. I am satisfied based on the affidavits of service filed herein that the 1st and 2nd defendants were served. Despite the service, they have not entered an appearance nor otherwise opposed the suit. The plaintiff's contention that it was a victim of fraud is therefore unchallenged and unopposed.
10. In my view, the bill of lading documents, DHL receipt from Port Bank, South Africa, and other documents in the plaintiff's bundle, all confirm the bona fides of the plaintiff.
11. I am satisfied that the suit has merit. Consequently, I issue the following orders: -
 - a. A permanent injunction restraining the 1st and 2nd Defendants, whether by themselves, their servants, agents, or employees, as well as any and all other persons, from:-
 - i. collecting, accessing, claiming, interfering with, or in any manner whatsoever dealing with the container number SEGU 1531145, currently lying at the Port of Mombasa; and
 - ii. asserting or purporting to assert any right, title, or interest in the said consignment, either directly or through any third party.
 - b. An order compelling the 3rd defendant to release and re-consign container number SEGU 1531145 to the plaintiff and to restore full possession, control, and ownership of the consignment to the plaintiff;
 - c. An order that all costs, including demurrage charges, storage fees, and related expenses, be recovered from the 1st and 2nd defendants.
12. The plaintiff shall have the costs of the suit.
13. Orders accordingly.

DATED AND SIGNED AT MOMBASA, THIS 17TH DAY OF DECEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE



In the presence of:-

Ms Ongaki, for the Plaintiff;

No appearance for the 1st, 2nd and 3rd Defendants; and

Brian – Court Assistant.

