

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
COMMERCIAL CAUSE NO. E001 OF 2025
(Formerly High Court of Kenya at Nairobi Milimani
Commercial Courts Commercial and Tax Division No.
HCCOMM/E481/2025)

TWINKLE CONSOLIDATED SERVICES LIMITED.....
PLAINTIFF

VERSUS

SARCARD GENERAL TRADING LIMITED.....1ST DEFENDANT
3 SHENTON WAY.....2ND DEFENDANT
EMPOWER WOMEN CO. LIMITED.....3RD DEFENDANT
KHALID MUHAMUD.....4TH DEFENDANT
DCIO – BUSIA DCI OFFICE.....5TH DEFENDANT
INTERPOL KENYA.....6TH DEFENDANT
THE ATTORNEY GENERAL.....7TH DEFENDANT

RULING

1. 2 matters were filed in respect of the dispute herein. The first in time was filed by Sarcard General Trading Company Limited, the 1st defendant herein, at Busia, being Busia HCCC No. E002 of 2025, on 15th July 2025. The suit was against Twinkle Consolidated Services Limited, the plaintiff herein, and Elka Cargo Kenya Limited. The plaintiff, in that suit, claimed that he had collected a consignment of 50 tonnes of scrap metal, at Wau, South Sudan, which was then despatched from there, on 20th May 2025, on motor vehicle registration make and number WAK 352. At Juba, South Sudan, the cargo was cleared, and transferred to motor vehicle registration marks and numbers SSD 414B and SSD 539P. As the same was leaving Juba, it was intercepted by and commandeered to the border of Uganda and South Sudan. The armed escort left the consignment there, and when the agents of the plaintiff sought to clear the

consignment, they were advised that the same had crossed to the border, and had been transferred to other motor vehicles, and was being transhipped in those vehicles.

2. The plaintiff therein lodged complaints with the Uganda Commissioner of Customs, as the goods were then under that jurisdiction. Not much progress was made, for the goods were moved into Uganda, allegedly on falsified documents, and shipped to the Malaba border point, between Uganda and Kenya, aboard vehicle registration marks and numbers KDT 394P trailer No. ZC 6805 and KCD 627 trailer No. ZF 0612. Efforts to have the consignment arrested in Uganda failed. A report was made at the Busia Police Station, and the consignment was eventually intercepted, as it crossed the border into Kenya, at Malaba. It was indicated as belonging to the 1st defendant therein, Twinkle Consolidated Services Limited, with the 2nd defendant, Elka Cargo Kenya Limited, indicated as the clearing agent. It was asserted that the consignment was valued at USD 225,000.00, and had been converted by Twinkle Consolidated Services Limited and Elka Cargo Kenya Limited. Declarations were sought that the scrap metal on motor vehicle registration marks and numbers KDP 394P/ZC 685 and KCD 627/ZP 9612 belonged to it, Sarcard General Trading Company Limited, an injunction to stop interference by the 2 defendants therein, general damages, costs and interests.
3. The said suit, was filed under a certificate of urgency, dated 15th July 2025, together with a Motion of even date, seeking orders to direct the OCPD Busia to continue detaining the consignment, pending further directions; and interim injunctive relief to stop interference by Twinkle Consolidated Services Ltd and Elka Cargo Kenya Limited, pending hearing and determination.

4. After considering the facts disposed in that application, I directed that the application be served, for *inter partes* hearing on 23rd July 2025. I also granted orders for the continued detention of the goods, and interim injunctive reliefs. When the matter came up on 23rd July 2025, for *inter partes* hearing, only the plaintiff, Sarcard General Trading Company Limited, attended court. It sought to withdraw the application, dated 15th July 2025, on the basis that the consignment had been transferred to Nairobi, subject to investigations by DCI, and Interpol had concluded that the goods belonged to Sarcard General Trading Company Limited. It was also sought that the orders, made on 15th July 2025, be discharged, and a date be fixed for pre-trial. I marked the application, dated 15th July 2025, as withdrawn, discharged the interim orders of 15th July 2025, and fixed the matter for pre-trial directions on 24th September 2025.
5. The second suit, was filed by Twinkle Consolidated Services Limited, against several persons, offices and entities being Sarcard General Trading Company Limited, 3 Shenton Way, Empower Women Company Limited, Khalid Muhamud, DCIO Busia DCI office, Interpol Kenya and the Attorney General. The plaintiff in that suit, Twinkle Consolidated Services Limited, claimed that it had bought a consignment of scrap metal in South Sudan, from a named individual, valued at Kshs. 52,714,285. The consignment was cleared at the Uganda/South Sudan border point, and entered Uganda. A complaint was lodged by a person, who claimed the consignment, and the same was resolved in Uganda, on the basis that the consignment belonged to Twinkle Consolidated Services Limited. It was then cleared for transit to Kenya, through the Busia border.
6. At Busia, it was impounded by the police, and its drivers were arrested, but they were later released. Efforts to resolve the matter failed, and the police maliciously caused

the consignment to be transported to Nairobi, through collusion of the police and Sarcard General Trading Company Limited. Twinkle Consolidated Services Limited sought injunctions, to restrain claim of ownership by the defendants, the detention of the consignment, and investigations into the ownership of the consignment; declarations that the consignment was lawfully bought by Twinkle Consolidated Services Limited, and the complaint made by the defendants was actuated by complete falsehood; a mandatory order for the release of the consignment and the trucks carrying it; compensation in damages for loss of business; costs and interests.

7. The second suit was filed in Nairobi, on 19th July 2025, as Milimani HC Commercial Cause No. E0481 of 2025. It was placed before Visram J, under certificate of urgency, on 21st July 2025, and it was directed that it be served, to be mentioned on 30th July 2025. The Motion, under certificate, dated 19th July 2025, sought injunctive reliefs, to restrain the defendants from claiming ownership of the consignment and making allegations that the plaintiff had stolen the scrap metal, and to restrain investigations on ownership. It also sought an order for the release of the consignment to itself.
8. It was subsequently ordered that the suit in Milimani HC Commercial Cause No. E0481 of 2025, be transferred to Busia, for consolidation with Busia HCCC No. E007 of 2025. Upon transfer of Milimani HC Commercial Cause No. E0481 of 2025 to the Busia High Court, the said matter was assigned number Busia HC Commercial Suit No. E001 of 2025. The matter was mentioned before me, on 24th September 2025, and was consolidated, by consent of both sides, with Busia HCCC No. E007 of 2025. Busia HC Commercial Suit No. E001 of 2025 because the lead file. Directions were given, on 24th September 2025, for filing of responses, and for disposal of the applications dated 15th

July 2025, 19th July 2025, 11th August 2025 and 15th August 2025, simultaneously by way of written submissions.

9. The application, dated 11th August 2025, is by Amen Transport Logistics Limited, and it seeks release of the 2 trucks, laden with the scrap metal, the subject of the suit herein.
10. The application, dated 15th August 2025, seeks furnishing of security, by Sarcard General Trading Company Limited, to the tune of Kshs. 10,000,000.00 or any other amount, call for the file in Busia HCCC No. E007 of 2025, to place an application filed in there by Amen Transport Logistics Ltd, dated 11th August 2025, or alternatively, require personal attendance of Ibrahim Abdullahi Jamaa, a director of Sarcard General Trading Company Limited for piercing of the corporate veil.
11. Sarcard General Trading Company Limited also filed a response to the application, dated 15th August 2025, by way grounds of opposition, and replying affidavit. The grounds, dated 26th September 2025, are that the orders sought were injudicious and oppressive, and threshold had not been met. The replying affidavit, was sworn by Ibrahim Abdullahi Jamaa, sworn on 26th September 2025. He avers that the application, dated 15th August 2025, was intended to harass and intimidate him. He asserted that Sarcard General Trading Company Limited was the legitimate owner of the disputed consignment, and he has attached documents in support. He avers that Sarcard General Trading Company Limited was the first party to go to court, in Busia HCCC No. E007 of 2025, and that Twinkle Consolidated Services Limited only moved the court on 13th August 2025, a month later. He asserts that the suit was being prosecuted by shadowy characters, and not by Twinkle Consolidated

Services Limited itself. He further asserts that the dispute was on ownership of the cargo.

12. Sarcard General Trading Company Limited filed a defence to the claim, as framed in Busia HCCOMM No. E001 of 2025. It denies the allegations made with respect to the scrap metal, arguing that the claim by Twinkle Consolidated Services Limited was driven by deceit and illegality. It asserts that it lost possession of the consignment at the Uganda/South Sudan border point, through fraud, deceit, coercion and corruption. It counterclaims for the said consignment of the scrap copper metal, on the basis that the same belonged to it, and had been converted by Twinkle Consolidated Services Limited to themselves. It alleges criminal conspiracy, between Twinkle Consolidated Services Limited and rogue South Sudanese government officers, to take away its property.
13. The parties have filed written submissions, which I have read, considered, and noted the arguments.
14. The ownership of the consignment in question is highly contested, between Twinkle Consolidated Services Limited and Sarcard General Trading Company Limited. Both sides have laid before the court details of how they allegedly acquire the same. The contest on ownership is at the core of the dispute. I cannot determine it finally and completely at this interlocutory stage. The matter has to go to full trial, for both sides to present evidence, to establish ownership. It is only after that that the court can rule, based on testimonies of the witnesses, the evidence recorded and the documents placed on record, on the question as to whom the consignment belongs, and to whom, therefore, it should be released. It would be premature, therefore, to have the goods released to other Sarcard General Trading Company

Limited or Twinkle Consolidated Services Limited at this stage. Let the matter be heard on its merits at full trial.

15. On the matter of security for costs, ownership has not been established at this stage. Ownership has not been conclusively determined, as between Twinkle Consolidated Services Limited and Sarcard General Trading Company Limited. That is to be established at trial. I cannot tell, at this stage, as to who has a superior claim to the consignment over the other. That is why the matter has to go to trial, for determination of that question. It would be premature, therefore, to require one side to provide security for due costs.
16. On the matter of release of the motor vehicles, on which consignment are currently laden, I appreciate that the vehicles could be just articles or vessels for conveying the consignment, from one stage to another. The dispute is on the consignment, and not the trucks. I say this without prejudice to what the police may be planning on doing with the trucks, and cargo at the end of their investigations. There would be no basis of continuing to hold onto the trucks, if the same are not part of the dispute on ownership, subject, of course, to the investigations being undertaken by the police, if they have a bearing on the trucks, in which case separate proceedings ought to be initiated in that behalf. I am only handling the civil aspect of the dispute, and not any aspect that may have a criminal bearing.
17. On the investigations, I do note that the DCI and Interpol are involved in the matter. The consignment is in fact in their custody. I note that the Attorney General has been made a party to these proceedings, on that account. However, the Attorney General had neither entered appearance, nor filed a defence, nor responses to the application. I am, therefore, in the dark as to what the DCI

and Interpol intend to do with the matter. Anyhow, the civil dispute is before me, the police have not requested the court to hold its hand on the matter, by way of holding it in abeyance, pending completion of the criminal investigations. Consequently, nothing should stop the court, from proceeding with the inquiry into the matter in these civil proceedings. To obviate embarrassment, should this court reach a decision different from that which the DCI and the Interpol arrive at, it would be prudent for the DCI and Interpol not to pursue prosecution for now, but nothing should prevent them from conducting investigations, for where evidence emerges, of criminality, nothing should stop prosecution of those involved. There would be no basis, therefore, for me to stop criminal enquiries by way investigations. In any event, injunctive relief is not available against the police, and the proper course of action, for whoever wishes to stop investigations, is to either file for Judicial Review, or a fair administration action, or a constitutional petition. Stopping the police from discharging their constitutional and statutory mandate does not rest in ordinary civil proceedings, but in proceedings in the realm of public law, in the manner that I have discussed above.

18. The final orders that I make are:
 - a) **That the *status quo* on the custody of the consignment to be maintained, in the sense of the same remaining in the hands of the DCI and Interpol, until determination of this matter or until further orders;**
 - b) **That the trucks, carrying the consignment, may be released, to whoever shall be proved to be their owners, but this order shall be subject to any ongoing inquiries or investigations, by the DCI and Interpol, relating to the said trucks;**
 - c) **That I hereby decline to order furnishing of security for costs by the Sarcard General**

Trading Company Limited, for the reasons given in the body of the ruling;

- d) That I also hereby decline to restrain the DCI and Interpol from continuing with investigations on the matter, for the reasons given in the body of this ruling;**
- e) That to move the matter forward, there shall be a mention, on 24th February 2026, for pre-trial, and fixing of a date of the full hearing of the matter, and**
- f) That the costs of the applications shall be costs in the cause.**

19. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 9TH DAY OF FEBRUARY 2026.

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Omwancha and Mr. Wanyanga, instructed by AM Omwancha & Company, Advocates for Twinkle Consolidated Services Limited.

Mr. Mwangi, instructed by WWM Advocates LLP, for Sarcard General Trading Company Limited.

Mr. Koskei, instructed by Eva Mbula Advocates, for Amen Transport Logistics Ltd.