



REPUBLIC OF KENYA



KENYA LAW
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**Siri Ya Ladha Halisi Limited & another v R & R Foodstuff Trading LLC & another;
Sealand Shipping PTD Limited & another (Interested Parties) (Commercial
Suit E055 of 2024) [2025] KEHC 4050 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 4050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL SUIT E055 OF 2024
F WANGARI, J
FEBRUARY 27, 2025**

BETWEEN

SIRI YA LADHA HALISI LIMITED 1ST PLAINTIFF

SEEDLINE COMMODITIES LIMITED 2ND PLAINTIFF

AND

R & R FOODSTUFF TRADING LLC 1ST DEFENDANT

SAKUMA EXPORTS LIMITED 2ND DEFENDANT

AND

SEALAND SHIPPING PTE LIMITED INTERESTED PARTY

FOCUS CFS, MOMBASA INTERESTED PARTY

JUDGMENT

1. Vide a Complaint dated 10/10/2024, the Plaintiffs, limited companies, sued the Defendants for failing to release the Bill of Lading and Delivery Order in respect to sugar consignment which as a result of the actions of the Defendants, the same was held at the Port of Kenya. The Plaintiffs also prayed for damages as a result of loss of business due to the acts of the Defendants.
2. It was pleaded that in the months of November and December, both the Plaintiffs and the Defendants, limited companies incorporated in the United Arab Emirates (1st Defendant) and Republic State of India (2nd Defendant), entered into an agreement where the Defendants were to supply to the Plaintiffs 2,000 metric tonnes of sugar. The Plaintiffs made full payment of the consignment which was to be shipped in 3 batches.
3. The said consignment was subject to the Bill of Ladings Nos;



- a. 3100009423 (10 × 20' FCL Containers)
 - b. 3100009429 (10 × 20' FCL Containers) and;
 - c. 3100009686 (10 × 20' FCL Containers)
4. Despite the full payment for the consignment, the Defendants withheld the original Bill of Lading No. 3100009686, and/ telex releases for the same so as to pave way for a Delivery Order to be issued to enable the Plaintiff take physical possession of the sugar consignment. The consignment which was packed in 1st Interested Party containers, was being held by the 2nd Interested Party in their warehouse.
 5. The warehouse rent charges, demurrage charges and storage charges continued to accrue, hence risking auction of the consignment to recover the said charges, thus putting the Plaintiffs out of business, loss of employment for their employees and loss of revenue to the government.
 6. The Plaintiffs prayed that judgment be entered against the Defendant herein for: -
 - a. A declaration that full payment for the sugar consignment having been made by the Plaintiffs continued withholding of Telex Releases, original Bill of Lading No. 3100009686 and Delivery Order on the part of the Defendant is capricious, unreasonable, unfair, unlawful and amounts to unfair enrichment.
 - b. An order that the Defendants are to pay all the Customs Warehouse rent, demurrage and storage charges incurred after 27/02/2024 for the 10 × 20' FCL containers and sugar consignment subject to the Bill of Lading No. 3100009686.
 - c. Damages for loss of business opportunity and profits.
 - d. A mandatory injunction directing the Defendants and the Interested Parties to forthwith release the 10 × 20' FCL containers to the Plaintiffs free of all the demurrage and storage charges.
 - e. Cost of the suit be awarded to the Plaintiffs and the Interested Parties as against the Defendants
 7. The Defendants and the Interested Parties were served with Summons to Enter Appearance in addition to the pleadings, but failed to do so. The Defendants failed to file their Statement of Defence. Judgment was entered in default of appearance and filing of the defence. The matter proceeded for hearing by way of formal proof. In the meantime, this court gave interlocutory orders for the release of the sugar consignment under the Bill of Lading in issue, subject to the personal undertaking by the directors of the Plaintiff companies. The Undertaking dated 11/10/2024 was filed and served, and the sugar was released to the Plaintiffs.
 8. The Plaintiffs Directors Abdulkadir Mohamoud Ali (PW1 for 1st Plaintiff) and Elyas Ahmed Maalim (PW2 for 2nd Plaintiff) gave sworn evidence and testified that they relied on their Witness Statements dated 10/10/2024. PW1 also produced the documents as listed in the List of Documents dated 10/10/2024. The Plaintiffs' evidence was as per the pleadings summarized herein above.
 9. There being no other evidence, the Plaintiff closed its case. The Plaintiffs thereafter filed their submissions dated 03/12/2024, and matter was set down for judgment.



Analysis

10. I have considered the pleadings on record and the evidence adduced by the Plaintiffs witnesses. The only issue for determination is whether the Plaintiffs have proved their case to warrant the granting of the relief sought.
11. Even though the suit remained undefended, it is trite that the legal burden of proof lies with the person who alleges. The Plaintiffs bears the legal burden of proof to prove the claim against the Defendants. Section 107 (1) of the Evidence Act, Chapter 80 Laws of Kenya provides as follows: -

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”
12. The Plaintiffs witnesses gave evidence as per the pleadings and the supporting documents. The Defendant were fully paid for the sugar consignment. There was no reason advanced as to why the Bill of Lading in question. I do concur with the submissions by the Plaintiffs that the Defendants profited unfairly at the expense of the Plaintiff hence the principle against unjust enrichment. The Plaintiffs relied on the case of Joel Mwangangi Kithure v Prisca Mukorimburi [2022] eKLR where the case of Macharia Mwangi Maina & 87 others v Davidson Mwangi Kagiri [2014] eKLR was quoted.
13. I find that the Plaintiffs have proved their case on a balance of probabilities and are entitled to the reliefs sought.
14. The Plaintiff sought for damages for loss of business opportunity and the same was assessed at Kshs. 1,000,000. Form the evidence on record, both oral and documentary, no evidence was adduced in support of the claim. The claim therefore fails.
15. The Interested Parties having been summoned to appear but failed to do so, any interests that they may have over this matter was not brought to the attention of the court. Under the circumstances, they are not entitled to any reliefs including that of costs.

Determination

16. Flowing from the above, judgment is entered as hereunder;
 - a. A declaration that full payment for the sugar consignment having been made by the Plaintiffs, continued withholding of Telex Releases, original Bill of Lading No. 3100009686 and Delivery Order on the part of the Defendants is capricious, unreasonable, unfair, unlawful and amounts to unfair enrichment.
 - b. An order that the Defendants are to pay all the Customs Warehouse rent, demurrage and storage charges incurred after 27/02/2024 for the 10 × 20’ FCL containers and sugar consignment subject to the Bill of Lading No. 3100009686.
 - c. A mandatory injunction directing the Defendants and the Interested Parties to forthwith release the 10 × 20’FCL containers to the Plaintiffs free of all the demurrage and storage charges.
 - d. Cost of the suit be awarded to the Plaintiffs as against the Defendants

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 27TH DAY OF FEBRUARY, 2025.



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F. WANGARI

JUDGE

In the presence of;

Abaja Advocate for the Plaintiffs

N/A by the Defendants

Brian, Court Assistant

