

UGANDA / JUDGMENT

M/s Schenker N.V v Uganda Revenue Authority & Another (Miscellaneous Cause 94 of 2023) [2023] UGCommC 161 (5 December 2023) [2023] UGCommC 161

COURT
Commercial Court of Uganda

BEFORE
Cornelia Kakooza Sabiiti, J

CASE / FILE NUMBER
Miscellaneous Cause 94 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION) MISCELLANEOUS CAUSE NO. 094 OF 2023

M/S SCHENKER N. V. : : : : : 3 : : : : : APPLICANT

VERSTJS

I. UGANDA REVENUE AUTHORITY

2. REAGENT CHEMICALS UGANDA LTD : : : : : RESPONDENTS

Before: Hon. Lady Justice Cornelia Kakooza Sabiiti RULING

This application is brought under section 98 of the Civil Procedure Act Cap 71, section 33 of the Judicature Act Cap 13 and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71 - I. The application seeks among other orders that-

(a) The 1st Respondent be ordered to unconditionally release to the Applicant containers No. TCNU8849303, GCXU2194124 & AXIU1618617 all containing conductive carbon black Ensaco 2509 and 2609 the subject matter of this application and in the control of the 1st Respondent for return to the Port of Loading.

Costs of the application be provided for.

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This Application is filed as Miscellaneous Cause by way of Notice of Motion and is supported by the affidavit of Mr. Nyombi Allan, a representative of the Applicant in Uganda appointed under a power of attorney. He briefly states that The Applicant, an international forwarding company was on the 15th, 16th and 26th September 2022 assigned by Imerys (the Consignor) to forward/transport by sea three (3) containers namely TCNU8849303, GCXU2194124 & AXIU161867 all containing conductive carbon black Ensaco 2509 and 2609 (the "goods") from Antwerp Belgium to Mombasa, Kenya. The goods were valued at USD 79,008, USD 28,089.60 and USD 61,440 respectively. On 8th October 2022, the Applicant issued master bills of lading No. HLCUANR220931, HLCUANR220931171 & HLCUANR220926771 respectively for shipment from the port of loading of ANTWERP to the port of Discharge at Mombasa. The Consignee indicated on the in the Non-Negotiable seaway bills, proforma invoice and the packing lists was the 2nd Respondent Reagent Chemicals Uganda Ltd.

That on 16th November 2022, the Applicant received an email from a one Izabela Dunaj of Konimpex Limited, based in Poland, that she had got notification of the arrival of a separate consignment to the 2nd Respondent. That Konimpex Limited had delivered carbon black to the consignee before and have never received payment. That Konimpex Limited investigated and established that the consignee was non-existent and that such orders in its name must be fraudulent. On the same day, the Applicant alerted its agents at Mombasa port not to release the consignment to anyone unless it receives further instructions from the consignor. Since delivery of the consignment at Mombasa, around 16th November 2022, the consignor has neither given any further instructions and neither has the consignee and its agents come forward to claim the consignment to date. C,ld

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The Applicant then sought for a renouncement letter from the consignee through the 1st Respondent as a requirement for re-export but the consignee was untraceable. The 1st Respondent advised the Applicant to seek redress from court hence the instant application.

The Application is opposed by the 1st Respondent through an affidavit deposed by Ritah Nabirye, an Advocate employed in the Department of Legal Services and Board Affairs of the 1st Respondent. She briefly states that the 1st Respondent cannot logically be compelled to release goods to a party who is not the legally recognized owner of the same in this case Reagent Chemicals Uganda Limited which company appears on the bill of lading as the consignee. That the 1st Respondent claims no legal ownership over the consignment which is the subject matter of this suit but is in possession of the same pursuant to its mandate as a government tax collection agent and has advised the Applicant to obtain a Court Order to grant her possession and facilitate the change of destination of the consignment

The Application is further opposed by the 2nd Respondent through an affidavit deposed by Isiahi Okubel, the Shareholder and Director of the 2nd Respondent. He briefly states that the 2nd Respondent has never been informed of the arrival and

discharge of the suit goods despite that its addresses were well included in the various shipping documents and as such could not claim the same. That the alleged correspondences between Izabela of Konimpex Limited and the Applicant is a scheme to defraud the 2nd Respondent of the goods designated to them and the same be re-exported to another destination. That the current application appears to be part of an organised cross-border fraud scheme where Ugandan innocent importers are denied their goods in a well-planned move by the Applicant and a similar scenario had in a renouncement and re-export process that involved the Applicant's subsidiary in Kenya (Schenker (Kenya) Limited). That it is not true that the 2nd Respondent was cks struck out from the Company Register and its registration has never been revoked \$5/12/23\$ 3

by any authority in Uganda. He prayed that the court orders that the orilinal documents ofthe consignment to wit, the seaway bills and bills of landing be hahded to the 2nd Respondent to enable it process the release of the goods to it or any other person as it may decide.

In rejoinder to the 2^d Respondent's reply, Mr. Nyombi Allan the Applicant's representative states that The 2^d Respondent is non-existent as it was struck offthe company register and therefore has no locus standi before court. That the charge of fraud against the Applicant cannot effectively be adjudicated based on mere affidavit evidence and ought to be the subject ofan independent suit against the Applicant. That the claims to the suit goods by the 2^d Respondent are duplicitous, malafide and an abuse of court process as it contradicts representations the 2nd Respondent made to court on 28 September 2023 and violates the Applicant's right to fair hearing by surprising the Applicant with a claim of interest in the consignment. That the Applicant will only consider releasing the consignment to the 2nd Respondent ifthey pay for the consignment, demurrage and other costs incidental thereto.

Representation

The Applicant M/s Schenker N. V was represented by M/s Kyagaba & Otatiina Advocates (Dentons). The l'r Respondent, URA was represented by the Legal Services and Board Affairs Department in URA. The 2^d Respondent M/s Reagent Chemicals Uganda Ltd was represented by M/s Xander Advocates.

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When this matter was initially filed the Application was only against the 1^t Respondent. However, on the first date ofhearing, counsel for the 2nd Respondent &f appeared and requested to be added as a party stating that their client was not aware of the subiect matter before court and only wanted to clear their name. Accordingly, ,{hla

the Applicant was directed to amend their application to add the 2n'r Respondent as a party and they subsequently filed a reply to the Application. The parties were directed to file written submissions however only the Apptlicant and the l,t Respondent fi led their respective submissions.

Resolution

Counsel for the Applicant raised a preliminary point of law as against the 2^d Respondent that the 2^d Respondent is non-existent as it was struck off the company register and therefore has no locus standi before court.

It is noted that the 2^d Respondent did not file any written submissions to counter the preliminary point of law raised by counsel for the Applicant. Be that as it may, under paragraph 12 of the 2nd Respondent's Affidavit in Reply, it is stated that it is not true that the 2nd Respondent was struck off from the Company Register and that its registration has never been revoked by any authority in Uganda. I have examined the attachments to the Applicant's Affidavit in Rejoinder that include a list of Companies struck off the Register by URSB on 30th August 2023. Under the said list the 2nd Respondent company, REAGENT CHEMICALS UGANDA LIMITED is listed as No.83 with a Reg. No. 80020002008633. This Reg. No. is identical to that in the Certificate of Incorporation attached by the 2^d Respondent to their Affidavit in Reply.

Under Section 265A (I) of the Companies Act of 2012 (as amended in 2022) the Registrar of Companies has powers to cancel the registration of the Company from the Register after issuing a thirty days' notice in a newspaper of wide circulation or any other media of its intention to strike off the Company from the Register. Upon the expiry of the thirty days and where there is no objection from any party, the Registrar is empowered to issue a notice to the effect that a company has been struck s)n--14

off the Register in the Gazette or in any media of wide circulation. A company struck off the Registrar ceases to have legal existence and is required to cease its operations failure of which it is subject to a penalty under Regulation 41(4) of the Company Regulations 2023. In the instant case, the 2nd Respondent cannot be a party to these proceedings having ceased to legally exist on 30th August 2023 when the Registrar of Companies struck them off the Register. Accordingly, I therefore uphold the preliminary objection of the Applicant.

With regard to the merits of the Application, the issues for determination are-

Issue No.1: Whether the suit goods should be handed over to the Exporter/Applicant?

Issue No.2: Remedies available to the parties

I will resolve the two issues concurrently since they are interrelated.

In the instant case the evidence on record is that the Applicant was assigned by the Consignor the suit goods worth USD 168,537.6 and shipped them to the Consignee (2nd Respondent) who on the Bill of Lading is indicated as Reagent Chemicals Uganda Limited. Coincidentally or unfortunately from the time the suit goods were delivered at Mombasa the 2nd Respondent had not claimed for them and could not be traced. The Applicant acting on information of possible fraud stopped the release of the consignment to anyone unless further instructions were received from the consignor.

Under International trade, the Consignee is the regarded as the legally recognized owner of the suit goods. However, in the instant case the lawyers of the Consignee (2nd Respondent) initially informed court that their client had no interest in the suit goods and were not aware of them and neither had they paid for them. They sought goods and were not aware of them and neither had they paid for them. They sought for orders for the Court to direct the Applicant to have them added as a Respondent \$S/2/2\$ 6

to the suit to clear their name which prayer was granted. In a surprising turn of events, after being added as party the 2nd Respondent now claimed ownership of the goods but did not adduce any documentation of the Bill of lading or shipping documents to support their claim. The 2nd Respondent went ahead to allege fraud against the Applicant which could not be proven by mere affidavit evidence.

Counsel for the 1st Respondent submitted that the 1st Respondent being unconditionally ordered to release the goods to the Applicant has the effect of denying the consignee title to the same which exposes the 1st Respondent to risks of being sued for release of goods to the wrongful party.

Section 24(4) of the of EACCMA 2004 provides that;

The Commissioner may permit the master or agent of an aircraft or vessel to amend the destination, ownership or status of goods specified in the report where a change in such destination, ownership or status is intended.

It is noted that the suit goods are still unpaid for, have not been claimed by the Consignee since their arrival in Mombasa on 16th October 2022 and are incurring demurrage costs. It is further noted that the 1st Respondent claims no legal ownership over the suit goods but is in possession of the same pursuant to its mandate as a government tax collection agent. The Applicant had sought from the 1st Respondent the unconditional release of the consignment for re-export under section 24(4) of the East African Community Customs Management Act 2004 (EACCM), and also sought the 1st Respondent to dispense with the requirement of the renouncement confirmation letter by the consignee, the 2nd Respondent. The 1st Respondent through its Commissioner Customs, in a letter dated 1st September 2023 accordingly permitted or issued the release of the consignment upon fulfilment of 3 conditions ¹ as follows:

- a) obtain an order from court of competent jurisdiction in Uganda authorising the consignor to repossess the consignment and indemnify, the 1st Respondent of any obligations arising from the seizure and custody of the consignments,
- b) payment of cancellation fees, in the event customs entries in respect of the consignment had been captured, and
- c) Request the shipping line to submit a request to 1st Respondent for change of the country of destination or consignee, whichever is intended.

The Applicant has brought this matter to a competent court seeking orders to have the goods released to them as the Shipper/Exporter. In light of the findings of this court on legal status of the 2nd Respondent they no longer have locus before this court and their claims of ownership remain unproven and in any case this court cannot issue orders in vain to hand over goods to a non-existent company.

Accordingly, I find merit in the prayers sought by the Applicant and hereby order for the release of the suit goods by the 1st Respondent to the Applicant for re-export on condition that the Applicant fulfills the other conditions set out in the letter dated 1st September 2023 by the Commissioner Customs.

Each party is to bear its own costs

It is so ordered.

c/12L*,:

CORNELIA KAKOOZA SABIITI . ITJDGE

Date: 5th December 2023

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