

UGANDA / JUDGMENT

World Best Corporation v The Commissioner Customs, Uganda Revenue Authority (Miscellaneous Cause No. 121 of 2018) [2018] UGHCCD 223 (29 June 2018)

[2018] UGHCCD 223

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Miscellaneous Cause No. 121 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 121 OF 2018

WORLD BEST CORPORATION----- APPLICANT

VERSUS

**THE COMMISSIONER CUSTOMS, UGANDA REVENUE
AUTHORITY..... RESPONDENT**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application is brought under sections 220,221,223 of the East African Customs Management Act and Order 52 r 1, 2 & 3 of the Civil Procedure Rules.

The applicant was represented by Latigo Richard and the respondent was represented by Ssali Aliddeki Alex.

The applicant is seeking a Release Order and Possession to be granted to the applicant and its duly appointed agents in respect of goods identified in containers no. CBHU4137293 and CBHU3883277 that are currently being held at Customs Bonded Warehouse No. W0383.

The main grounds for this application are;

- a) That the Applicant is a South Korean based chemicals manufacturer with customers around the world and in the course of its business, a certain purchase order was made for goods which were shipped to Uganda in 3 containers No. TTNU1366498, CBHU4137293 and CBHU3883277.
- b) That the goods were sent on the premise that they were supposed to be paid for against delivery of the Bills of Lading, which Bills of Lading were returned unpaid and consignee could not be traced.
- c) That when the goods were delivered a customs declaration was made to the Customs Department of the respondent and Container No. TTNU1366498 was cleared and exited by the respondent's officers.
- d) That at the time, the applicant made a demand for payment through the Notify party on the Bill of Lading, the party denied having made any orders for the goods and also disowned the consignee on the Bills of Lading as person unknown to it.
- e) That the applicant through its lawyers, conducted a search of that Consignee and has established that such consignee in fact does not exist as a legal entity in Uganda.

The applicant through an appointed attorney vide power of Attorney dated 14th May 2018 duly registered with the registrar of documents made an affidavit in support of the application with several annexures including Bills of Lading, Letter of company search for OSHO Company East Africa, Letters and communications between the respondent and applicants

The respondent filed an affidavit in reply through Lumuria Thomas Davis who is an officer Litigation customs and he confirmed that indeed the said 2 containers are in their custody and bonded ware house and that they are investigating the circumstances under which one of the Containers-TTNU1366498 was released from the bonded Warehouse.

The respondent in their affidavit paragraph 6 thereof also confirmed that they are willing to release the goods to any person who has the correct documentation on condition that the said person shall indemnify the respondent against any future third party claims.

The respondent also informed court that indeed there was another suit filed in the Commercial Division of the High Court vide **Civil Suit No. 403 of 2018** between *Excel Freight Consult Limited vs Commissioner Customs Uganda revenue Authority & World Best Corporation.*

When the matter came up for hearing on 1st June 2018, the applicants counsel informed court that they have picked interest and are in the process of investigating the case in commercial court and that they would be engaging with the respondent to establish how best this matter would be resolved by both parties.

According to the evidence also availed to this court it showed that the Commercial court issued an Interim Order for two weeks from 11th June 2018 and it lapsed on 25th June 2018. It would appear that the same was never renewed or extended. The interim period was intended to enable all the parties involved to resolve their own issues and on the evidence available the respondent initiated a communication for a meeting and copies of the email sent to excelfreightconsult@gmail.com (plaintiff) and their lawyer olokbernard@gmail.com (Bernard Olok) inviting them for the meeting on 22nd June 2018 at 10;00am.

It was the submission of the parties that the said lawyer and his client never attended the said meeting and no reasons were availed for their non attendance.

This court entertained the matter and heard the submissions of counsel for both parties. The applicant's counsel made submissions based on the application and the supporting affidavit. Since the application appeared not to have been opposed, the applicant in their submissions confirmed that they are willing to give an undertaking to indemnify the respondent in case of any third party claims as a condition for the release of the said goods.

The applicant also submitted that the said goods are perishable and are likely to lose value within the next two months if not released soon. The applicant indeed wrote a letter explaining the perishability of the said goods on 11th may 2018.

The respondent's counsel on his part submitted that the stated consignee on the Bills of Lading according to their investigations does not exist in Uganda. In addition, the suit filed in Commercial Court by a purported agent-Excel Freight Consult Limited of the said Consignee is only seeking that he deals with directly with the exporter and he pays the outstanding dues to the exporter. To them it would be irrational to hold onto the goods when the applicant wants to have its goods released to them.

The respondent counsel further submitted that in their meeting held on 22nd June 2018 and in which meeting the Korean Embassy officials were in attendance and the donee of the applicant, the respondent expressed their reservations of the with the appointed done and demanded that a member of the law firm should be appointed as the new done in order to release the said goods to them in that capacity in addition to indemnity of the applicant.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.

The applicant in this matter sent a consignment of goods to a purported Ugandan company- OSHO COMPANY (EA) LIMITED, Plot 55-57 Masaka Road Kampala, Uganda, Tel +256 750634528 Fax 414 224654.

The said company according to Uganda Registration Services Bureau in their letter dated 16th May 2018 does not exist;

"*A search conducted on our records revealed that the name OSHO COMPANY EAST AFRICA LIMITED is not reflected in our database*"

That the respondent also wrote to Registrar General-Uganda Registration services Bureau while investigating the said company about its Involvement in fraudulent importation of goods on 9th April 2018.

The Registrar General replied to their letter on 23rd April 2018 and had also confirmed that the company doesnot exist;

" *A search conducted on our records revealed that the name OSHO Company East Africa Limited is not reflected in our database*."

It would appear the applicant was conned since a company could not have ordered such a big consignment without being a registered as a company in Uganda.

The respondent doesnot have it in its system of tax payers or importers and it has no known place of abode.

It is clear the fraudsters used a similar company name that is duly registered in Kenya as a Notify Party on the Bills of Lading i.e OSHO INDUSTRIES LIMITED, OSHO COMPLEX, SASIO RD OFF LUNGA LUNGA INDUSTRIAL AREA, P. O. BOX 49916-GPO 00100 NAIROBI, KENYA.

When the applicant tried to contact the said Kenyan company about its payment for the said consignment, the said company denied knowledge of the said company as well. It appears it was at this moment that the applicants realised that they had been conned into the said transaction.

In a surprise turn of events, a clearing forwarding company-(Excel Freight Consult Limited) which is an agent of a non-existing legal entity-Osho Company East Africa Limited has instituted civil suit No.403 of 2018 (*Excel Freight Consult Limited vs Commissioner Customs-URA & World Best Corporation*) claiming ownership of the said goods and seeking among other others;

" b) *A declaratory order that the plaintiff is the owner of the goods comprising 240 drums of Korean Tdi Toluene di isocyanate in the absence of the consignee.*

c) the defendant releases the goods to the plaintiff being the owner of the goods

d) the plaintiff directly deals with the exporter and pays the outstanding amount due on the goods to the exporter"

It was on the basis of the said suit that the respondent in this matter was being hesitant in releasing the said goods to the applicant.

It is this courts observation and finding that the said suit is part of the fraud that was intended to defraud the applicant and as court of justice, this cannot be used to stand and it is an abuse of court process.

In the circumstances, this court is satisfied that the goods under URA custody belong to the applicant and a Release Order and Possession is granted to the applicant and its duly appointed agents in respect of goods identified in containers no. CBHU4137293 and CBHU3883277 that are currently being held at Customs Bonded Warehouse No. W0383.

The applicant should execute another power of attorney in favour of the lawyers who should receive the said goods and they should as well execute a deed of indemnity in case of third party claims against the respondent.

Each party shall bear its own costs

It is so ordered.

SSEKAANA MUSA JUDGE 29th /06/2018

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