

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-CS-0745-2005**

- 1. BAZIRA SAM AND JOSEPH ODOI OCHIENG :::::::::: PLAINTIFFS**
- 2. JOSEPH ODOI OCHIENG**

**VERSUS**

**CONTAINER FREIGHT LTD            :::::::::::            DEFENDANT**

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE**

**R U L I N G:**

The plaintiffs sued the defendant to recover US \$23,790 and K Shs.186, 050= in special damages as well as general damages for breach of contract. In the plaint, the defendant is described as a company registered under the laws of Kenya and carrying on transport business in Kenya and Uganda. The plaintiffs claim that they engaged them to transport a cargo container from Mombasa to Kampala in June 2005. That they paid them K Shs.186, 050= for that service. The plaintiffs' container and its cargo was lost in transit in Western Kenya enroute to Uganda. When the case came up for a scheduling conference on 9/5/2007, learned counsel for the defendant raised a preliminary point of law that this Court lacks jurisdiction. Counsel's argument is that the theft of the goods took place in Kenya, that the goods were being escorted by Kenyan Police and that the witnesses are based in Kenya. For these reasons, counsel is of the opinion that this Court lacks jurisdiction. Learned counsel for the plaintiffs does not agree.

I have addressed my mind to the arguments of both counsel.

It is trite that parties cannot confer jurisdiction on a Court which lacks jurisdiction. They can only choose any one of the Courts simultaneously having jurisdiction over the matter. Section 15 of the Civil Procedure Act confers jurisdiction on our Courts according to (a) the place where the contract was made; (b) the place where the contract was to be performed; and (c) where the defendant voluntarily resides, carries on business or personally works for gain.

In the instant suit, the parties are not agreed as to where the contract was made. It appears to be a case of e-commerce where deals are negotiated and concluded on internet. Be that as it may, in suits arising out of contract, the law is clear, under section 15 of the Civil Procedure Act, that the cause of action arises within the meaning of that law at any of the following places:

- (i) the place where the contract was made;
- (ii) the place where the contract was to be performed or the performance thereof completed; and;
- (iii) the place where in the performance of the contract any money to which the suit relates was expressly or impliedly payable.

I have already observed that the place where the contract was made appears to be in dispute given that this may have been on internet. From the pleadings, however, it is clear that the contract was to be performed partly in Kenya and partly in Uganda. Its performance was to be completed in Uganda by delivering the container and its cargo to the plaintiffs in Kampala. In these circumstances, it is clear to me that the Court in the Republic of Kenya and/or the Republic of Uganda has jurisdiction in the matter. In other words, the plaintiffs were at liberty to file their claim in either country. This being so, their choice of the Ugandan Court cannot be faulted.

Learned counsel for the defendant submitted that the plaintiffs had opted to file the suit in Kenya where they issued a notice of the intended suit to them in Kenya. That the defendants may end up facing a similar suit in Kenya. Learned counsel for the defendant has assured this Court that there is no pending suit in any Kenyan Court by the plaintiffs against the defendant; that none has ever been filed there; and none is intended to be filed there. There is no reason for me to doubt his assurances on the matter. Likewise, if the defendants want to file Third Party Notice against any body, there is no evidence that such a person cannot be impleaded in our Courts. As for witnesses, the fact that most are in Kenya cannot be enough ground to oust the jurisdiction of the Ugandan Court. The remedy for that would be an award for costs to the deserving party.

For the reasons stated above, I would over rule the objection and order that the suit proceeds to the next stage of scheduling. I do so. Costs shall abide the outcome of the suit.

Yorokamu Bamwine

**J U D G E**

24/05/2007

**Order:** This ruling shall be delivered on my behalf by the Registrar of the Court on the due date.

Yorokamu Bamwine

**J U D G E**

24/05/2007