

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0579-2003

Ngege (U) Ltd

Plaintiff

Versus

SDV Transami (U) Ltd

Defendant

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff has brought this action against the defendant seeking to recover the sum of US\$123,477.95 together with interest and costs of the action. It is the plaintiff's story that in July 2002 it hired the defendant to transport 2 containers of fish from Kampala to El-Ahram Trading Co. in Egypt. On arrival the fish, after inspection was rejected as it was unfit for human consumption.
2. The survey report revealed that the fish was in a mouldy condition due to the malfunction of the refrigeration unit of the defendant which allowed the fish to defreeze. The plaintiff, as a result of the malfunctioning of the defendant's refrigeration unit, suffered loss amounting to US\$123,477.95.
3. It is the contention of the plaintiff that the defendant's conduct amounted to a breach of contract. The particulars of breach of contract are stated to be: (a) transporting the fish in containers with faulty refrigeration units. (b) Storing and transporting the fish in containers which are not fit for the purpose. (c) Not servicing their refrigeration equipment to ensure safe storage of the fish in transit. The plaintiff prayed for judgment for the loss sustained together with interest and costs of the suit.
4. The defendant opposed this action. Firstly that there was no contract between the plaintiff

and the defendant as alleged by the plaintiff. Secondly that the transportation of the 2 containers was the duty of Orca-Lines and that the said company was contracted to do so by the consignee El Ahram Trading Company and not the plaintiff. The carrier provided the containers in which the fish was packed. The said containers were not owned by the defendant and it had no duty to maintain the same.

5. The carrier, Orca-Lines engaged the defendant to clear the consignments for export, position the containers for loading of the fish and deliver the containers to the carriers at Kampala which they did.
6. Finally the defendant contended that in its dealings with its clients, including the dealings with Orca-Lines the relationship is governed by the defendant's standard trading terms and conditions which exempt liability in circumstances as the current one. The defendant prayed that this suit be dismissed with costs.
7. A scheduling conference was held before my brother, Lugayizi, J., on 08/12/2003. Agreed facts were recorded. Documents whose admissibility was not contested were admitted into evidence. The plaintiff indicated that it would call 3 witnesses and the defendant indicated that it would call 4 witnesses. 4 issues were agreed upon, but given the course the trial of this case took, I need to set out only one. That is whether there was a contract between the plaintiff and the defendant to transport the 2 containers.
8. Trial was fixed to commence on 11/05/2004. On that day the defendant was not ready to proceed and the matter was adjourned to the 18/06/2004. On 18/06/2004 the plaintiff was not ready to proceed as one of its two member team of advocates was absent, in spite of having 4 witnesses in court. It was adjourned to the 26/08/2004. On 26/08/2004 the plaintiff called one witness, PW1, Mustafa Desouky, who after what must have been less than 5 minutes of testimony, stopped testifying, on the application of his counsel, as he did not have certain documents he wanted to refer. The case was adjourned to the 15/10/2004.
9. On the 15/10/2004, the court was informed by the plaintiff's counsel that they had abandoned PW1. PW2 was George Gamill, the export manager of El Ahram Trading Company. He stated that he knew the defendant. That the defendant has had prior dealings with the plaintiff. The defendant sent the fish that they had ordered. When the fish arrived in Egypt, entry of the fish was rejected by the Egyptian Ministry of Healthy as it was not fit for human consumption.
10. In the course of his testimony he stated,

'I do not know SDV Transami (U) Ltd. Plaintiff never asked SDV Transami (U) Ltd to clear the above consignment for us. We only dealt with the defendant. I do not know Orca Lines. We never dealt with them to transport our fish.'

11. Further on he stated,

'At the time I was representative of our company El-Ahram in Kampala. I never signed any copy of the bill of lading at the time. I never asked Orca-line to transport our fish to Egypt. I do not know how they came into the picture. I never asked SDV Transami (U) Ltd to clear the consignment on our behalf.Plaintiff was supposed to supply us fish in respect of the said 2 agreements. The supply was to take place in Egypt. Contract we had with the plaintiff was CIF Egypt.'

12. Further on in his testimony in cross examination PW2 stated,

'I do not know annexure A to amended WSD. I did not lie to court last time. Mr Shahab is the one who contracts at this level with transporters. I do not. I therefore would not know whether Orca-Line contracted with my company or not.'

13. That was all the evidence that the plaintiff was able to adduce in this case, in spite of repeated further opportunities to present further evidence on 25/06/2007, 10/12/2007, and 11/02/2008. Neither did the defendant produce any witnesses on the 11/02/2008 the day it was directed to have all its witnesses in court. The case now has to be decided upon the available evidence.

14. The evidence of PW2 is useless to establish where there was a contract for transportation of the fish between the plaintiff and the defendant. PW2 is not an officer of the plaintiff. PW2 is not an agent or employee of an agent of the plaintiff, with instructions to act for the plaintiff. PW2 knew nothing about transportation contracts between his company and any other company as this was handled by another officer.

15. It is clear to me that the plaintiff has failed to adduce any evidence that establishes, as it alleged, that there was a contract between the defendant and the plaintiff for the transport of the fish in question to Egypt. There is on single iota of evidence to support the plaintiff's case. I dismiss the same with costs to the defendant.

16. It is a pity that this kind of case engaged the resources of the court for so long. The trial stretched over 4 years in spite of the fact that the preliminary steps, in this case the scheduling conference was held within 4 months of filing of the suit and the trial began fairly promptly in less than 9 months of filing of the suit. This delay is unacceptable.

Signed, dated and delivered at Kampala this 19th day of June 2008

FMS Egonda-Ntende

Judge