

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION

HCT-00-CC-CS-0314 -2008

COPYLINE LTD. PLAINTIFF

VERSUS

RAPID SHIPPING & FREIGHT (U) LTDDEFENDANT

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

The plaintiff, Copyline Limited, filed HCT—00-CC-CS-314-2007 against Rapid Shipping and Freight Uganda Ltd for breach of contract to clear the plaintiff’s goods at Mombasa port, transport and deliver them to the plaintiff at Busia entry border point.

At the Scheduling Conference two documents were by consent of both parties received as plaintiff exhibits. These were Receipt No. 6674 issued by Rapid Shipping and Freight (U) Ltd, (the defendant), exhibit P1, and the Combined Transport Bill of Lading HBL No. RFI SF 70032 E issued by Rapid Freight International L.L.C. exhibit P2.

On the basis of the two exhibits Mr. Noah Mwesigwa, counsel for the defendant, raised a preliminary objection that the plaintiff has no cause of action against the defendant. Counsel argued that exhibit P2 is a Bill of Lading and as such basically the parent contract document in any carriage contract. That the Bill of Lading was issued by Rapid Freight International LLC. That the defendant was only a notifying party and a delivery agent. That exhibit P1, a receipt issued by the defendant was for payment for freight charges from Dubai to Busia. Counsel contends that the receipt was in respect of the Bill of Lading issued by Rapid Freight International LLC, on which the defendant is indicated merely as notifying party and / or delivery agent. Further counsel argued that the defendant, as an agent of a disclosed principle, Rapid Freight International LLC, who had issued the Bill of Lading and shipper cannot be held liable. That the proper party should be Rapid Freight International LLC. Counsel cited Kenfreight (U) Ltd Vs Leather Industries (U) Ltd HCCS. No. 119 of 2000, Pheneas Agaba Vs Swift Freight HCCS No. 1000 of 1999, Equinox Global Trading Vs Panaphina HCCS No. 570 of 1999.

On the otherhand Mr. Adibango, Counsel for the plaintiff, submitted that the plaint disclosed a cause of action in compliance with Order 7 rule 1 (e) of the Civil Procedure Rules. Counsel relied on Auto Garage & Others Vs Motokov (No 3) (1971) EA 514. He argued that in the plaint the plaintiff discloses that he agreed with and contracted the defendant to clear the plaintiff's goods from Mombasa, transport and deliver them to the plaintiff at entry boarder point at Busia and for that a payment of US\$ 2160 was made to the defendant who duly issued the receipt exhibit P1. He submitted that the plaint had sufficiently disclosed a cause of action against the defendant.

Order 7 rule 1 (e) of the Civil Procedure Rules states that a plaint shall contain facts constituting the cause of action and when it arose. Under rule 11 (a) of the same order a plaint shall be rejected where it does not disclose a cause of action. In Auto Garage Vs Motokov (above) Spy VP held that there are three essential elements to support a cause of action:

1. the plaintiff enjoyed a right,
2. the right has been violated,
3. the defendant is liable.

The Plaintiff in its plaint claims:-

“3. ---

(a) On or about the 13th day of March 2007 the plaintiff contracted with the Defendant to clear the plaintiff’s goods at Mombasa port, transport and deliver them to the plaintiff at Busia entry boarder point at US\$2160 (United States Dollars two thousand, one hundred sixty only). A Photostat copy of the receipt is hereto attached as annexure “A”

(c) To date the defendant has failed to transport and deliver the consignment to the plaintiff at the agreed destination despite several calls and reminders to do so.”

At the Scheduling Conference two documents were by consent received as plaintiff exhibits P1 and P2, Annexures “A” above is exhibit P1, a receipt issued by the defendant, Rapid Shipping and Freight (U) Ltd. It is in receipt of US\$ 2160 received by the defendant from the plaintiff “ in settlement of freight D x B/Busia LCL Shipment 7000094/ SF70032E”

Counsel for the plaintiff contends that the plaint read together with exhibit P1 disclosed a cause of action against the defendant.

On the otherhand Counsel of the defendant contends that exhibit P1 cannot be divorced from exhibit P2, which both show that the transporter was Rapid Freight International LLC, for whom the defendant had received payment as agent of a disclosed principle.

In *Kenfreight (U) Ltd Vs Leather Industries (U) Ltd* (supra) Justice C. K. Byamugisha held that in CIF contracts the bill of lading constitute the contract of carriage. Exhibit P2 is a Combined Transport Bill of Lading issued by Rapid Freight International LL.C under Ref. HBL No. RFI SF 70052 E. On it is the following information, relevant for courts consideration:-

Shipper/Exporter	- Steve Lubega c/o Rapid Freight Intl LLC
Export reference	- Rapid Freight International LLC
Consignee	- Copyline Ltd

Notifying Party	-Rapid Shipping and Freight (U) Ltd
Place of receipt	- D X B
Port of Discharge	- Mombasa
Delivery Agent	- Rapid Shipping & Freight (U) Ltd.

The Bill of Lading shows that the shipper was Rapid Freight International LLC and the consignee is the Plaintiff. The parties to the contract of carriage evidenced by the Bill of Lading, exhibit P2, were the Plaintiff and Rapid Freight International LLC. The defendant is therein only named as a “Notify Party” and “Delivery Agent.” By the Bill of Lading the defendant was not the transporter. The defendant was representing Rapid Freight International LLC as its notify party and as its delivery agent. Counsel for the defendant argued that the Receipt Exhibit P1, issued by the defendant, shows that payment was for freight from Dubai upon the Bill of Lading issued by Rapid Freight International LLC. That the Bill of Lading indicated that freight and charge were payable on freight collection. He therefore submitted that the defendant had received payment on behalf of Rapid Freight International LLC, whom he argued was a disclosed principle.

In *Phenehas Agaba Vs Swift Freight International Ltd* (supra) Justice Arach – Amoko found that the Air Way Bill was issued by Swift Freight International LLC of Dubai – UAE. The plaintiff was both the consignor and consignee. There was no reference at all to the Defendant, Swift Freight International Ltd, on the Airway Bill. She also found that under the law Swift Freight International LLC and Swift Freight International Ltd were different legal entities. Her Lordship held that the Airway Bill was prima facie evidence of the conclusion of the contract of carriage between the plaintiff and Swift Freight International LLC Dubai, and not the defendant. She further found that from the evidence on record it was apparent that the defendant was an agent of a disclosed principle and stated:-

“The general rule is that where an agent makes a contract on behalf of his principal, the contract is that of the principal not that of the agent, and prima facie at common law the only person who can sue is the principal and the only person who can be sued is the principal” Per *Wright J, in Montgomerie Vs United Kingdom Mutual Steamship Association (1891) 1 QB 370 at 371.*”

In Equinox Global Trading Co Ltd Vs Panalpina Uganda Ltd (Supra) the Bill of Lading was issued by Paintainer Express Line. It showed the carrier as Pantainer Ltd of Basle Swizerland; the port of Loading as Tillbury, Point of discharge as Mombasa and the place of delivery as Kampala. The plaintiff's Counsel had argued that there was a contract with the defendant to transport the goods from Mombasa. Justice Arach-Amoko held that the Bill of Lading showed that the carrier thereon was Pantainer Express Line Ltd and not the defendant. That the Bill of Lading is a document acknowledging the shipment of the consignor's goods for carriage by sea. It operates as a receipt for the goods; it summarises the terms of the contract of carriage and act as a document of title for the goods. Further that there couldn't be two contracts in respect of transporting the same goods. She stated:

“--- The assertion that there was a contract with the defendant to transport the goods from Mombasa is clearly inconsistent with the terms of the Bill of Lading, as the defendant is not named therein as the carrier. Court therefore finds on the basis of the evidence of DW1 that the defendant merely acted as an agent of Pantainer for purposes of negotiating and securing payment. There was no contract of carriage between it and the plaintiff. The contract was with Pantainer Ltd.”

In the instant case, Counsel for the Plaintiff contends that there was an agreement between the plaintiff and the defendant independent of the Bill of Lading. The plaintiff in its pleadings states that it “contracted with the defendant to clear the plaintiff's goods at Mombasa port, transport and deliver to the plaintiff at Busia entry boarder point,” which the defendant has failed to do. The plaintiff concedes that up to Mombasa the defendant was an agent of Rapid Freight International LLC but contends that from the point of clearing the goods, and transporting them from Mombasa to Busia there was a separate agreement for which the defendant was the principal party.

The instant case is distinguishable from the Rhenehus Agaba and Equinox Grobal cases above. The decisions therein were based on the evidence adduced by both parties. In the instant case the issue is being considered at a preliminary level on the pleadings and documents exhibited in Court at the scheduling. Secondly the Bill of Lading only indicates the point of discharge which

is Mombasa. It does not name a place of delivery. Busia which is pleaded as the point of delivery only appear on Exhibit P1, the receipt issued by the defendant.

In the circumstances I am of the considered view that the issue whether there is a contract between the plaintiff and the defendant cannot be properly adjudicated upon on the pleadings and the two exhibits without hearing evidence interparties. I therefore find that the pleadings disclose a cause of action against the defendant. The preliminary objection fails with costs to the plaintiff.

Hon. Mr. Justice Lameck N. Mukasa

JUDGE

26th September, 2008