

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA  
AT KAMPALA  
(COMMERCIAL DIVISION)  
CIVIL SUIT NO 513 OF 2012**

**MESSRS INCARGO FREIGHTERS AND AGENTS LTD}..... PLAINTIFF**

**VERSUS**

**THE COMMISSIONER OF CUSTOMS URA}..... DEFENDANT**

**BEFORE HON MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Plaintiff's action against the Defendant is for compensation for loss suffered for the impounding of the plaintiffs trade goods, general damages for breach of statutory duty and costs of the suit.

The plaint of the plaintiff discloses that the plaintiff carries on business as a trading company and was cleared by the honourable Minister of Tourism, Trade and Industry to import dry cells batteries with the brand Tiger head under statutory instrument number 23 of the 9th of May 2011 issued and that the External Trade Act (Export Licence) [Tiger Head Brand Batteries] Order 2011. Subsequently the plaintiff imported six containers of Tiger head dry cells from Hong Kong, the People's Republic of China. When the prices arrived in the country the defendant or that the impounding of the same on the allegation that the plaintiff had traded in restricted goods whereas not at all attempts by the plaintiff to have its goods returned were futile. 2/6 containers were impounded and taken to the defendant's parking yard at Nakawa where they were still being held. The plaintiff alleges that the acts of the defendant are high-handed, biased and partisan designed to cause financial loss to the plaintiff and is a resulted into the plaintiff suffering great loss and inconvenience is for which the plaintiff claims special and general damages. Particulars of special damages are given shall be referred to in the judgment.

In reply the written statement of defence of the defendant denies the claim and avers that the plaintiff's suit is barred in law, misconceived and discloses no cause of action and should be dismissed with costs. Alternatively the plaintiff maintained that sometime in August 2012, the plaintiff imported six containers of Tiger head batteries from the People's Republic of China. The plaintiff declared the goods under reference C65942 and C66013 whereupon the plaintiff paid taxes due pending the lease of the containers to the plaintiff. Before the goods could be released to the plaintiff, the defendant received an interim order issued by court dated 21 August 2012. In

the order the court ordered that all containers belonging to the first defendant (who is the plaintiff) containing "Tiger head" batteries in the hands of control of the second respondent (who is the defendant) be detained and preserved by the second respondent until final disposal of the main application. The defendant seized two of the plaintiff's containers following the order. The plaintiff and the defendant were respondent is in miscellaneous application number 480 of 2012 arising out of miscellaneous application number 479 of 2012 and also arising out of HCCS number 333 of 2012 filed by Guangzhou Tiger Head Batteries Group Ltd for a temporary injunction. On 19 October 2012, the court granted Guangzhou Tiger Head Batteries Group Ltd a temporary injunction ordering the second respondent who is not the defendant to disdain and preserved consignments containing Tiger head batteries currently in the second respondent's hands (defendant) until final determination of HCCS number 333 of 2012. Consequently the defendant's actions were unlawful and unjustified. The defendant maintains in his defence that the plaintiff is not entitled to any claims or remedies against him and that no notice of intention to sue was ever served on him.

In the reply to the written statement of defence of the defendant, the plaintiff avers that the alleged order mentioned in the defendant's defence came much later after the defendant had unlawfully detained the containers and therefore the detention did not have the blessing of the court.

At the hearing of the suit, the plaintiff was represented by Peter Kibirango of Messieurs Ngaruye, Spencer and Company Advocates holding brief for Counsel Spencer while the defendant was represented by Counsel Angela Nairuba of the Legal Affairs Department of the defendant.

Counsels filed a joint scheduling memorandum in which they indicated the agreed facts, documents and issues for trial.

It was agreed that at the beginning of the month of August 2012, the plaintiff imported six containers of Tiger head batteries from the People's Republic of China and each container contained 1100 cartons of the said goods. On the second day of 2012, the plaintiff's goods contained in two containers were released by the defendant. While they were being transported, an official from the defendant impounded the goods together with the vehicles. The model vehicles were released one month after the impounding the containers were released on this 22nd of February 2013. The plaintiff's previous lawyers Messieurs Birungye Barata and company advocates wrote to the defendant challenging the impounding of the client's goods. The plaintiff paid taxes for the goods pursuant to declaration and assessment notices. On 21 August 2012, the defendant was served with an interim order in High Court miscellaneous application number 48 of 2012, arising from High Court miscellaneous application number 479 of 2012 and also arising from this suit Guangzhou Tiger Head Batteries Group Company Ltd versus the Plaintiff (Incargo Freighter's and Agents Ltd) and Uganda Revenue Authority. 19th of October 2012, the defendant was served with an order of a temporary injunction in High Court miscellaneous application

number 479 of 2012 and arising from HCCS number 333 of 2012. On 11 July 2012, the plaintiff had applied to the defendants for the clearance of 6 x 20' containers of batteries at Mombasa port and on 11 July 2012 a letter of confirmation for importation and clearance of 6 x 20' containers was received from the defendant. On 27 August 2012, the plaintiff submitted the samples of the said batteries for analysis to Uganda National Bureau of Standards and they were certified for the market. To model vehicles were released one month from the date of impounding and two empty containers were released on 22nd of February 2013 by the defendant's servants. On 11 July 2012, the plaintiff applied for the confirmation and clearance of the said goods which was granted by the defendant. Additionally counsel was admitted various documents which were exhibited.

On the 20th of May 2013, after a preliminary discussion in court, it was agreed by counsels that a point of law would be tried first and disposed of on the basis of agreed facts. The issue for trial was whether the impounding of the goods by the defendant was illegal. It was also agreed that the goods were impounded on or about 3 August 2012 and court orders subsequently came around 20th of August 2012 another court order was made in October 2012. Counsels agreed to file written submissions on the point of law raised by the defendant.

Written submissions were commenced by the defendants counsel on the points of law raised by the defendant. In support of the point of law, the defendants counsel maintained that the defendant complied with the court order directing him to detain and preserve the plaintiffs goods until the final determination of HCCS number 333 of 2012, between **Guangzhou Tiger Head Batteries Group Company Ltd versus Incargo Freighters Agents Ltd** and ipso facto the plaint does not disclose a cause of action against the defendant and should be struck out and the suit is dismissed with costs to the defendant.

The defendant's argument in support of the preliminary point of law is that a party served with a court order whether null or void cannot be permitted to disobey it. Counsel relied on the case of **Housing Finance Bank Ltd and Another versus Edward Musisi**, Court of Appeal miscellaneous application number 158 of 2010. In that case, the court noted that it was not for a party to choose whether or not to disobey an order. The order must be complied with in totality and in all circumstances by the party concerned, subject to the party's right to challenge the order as enabled by the law. The principle of law was also applied by the Court of Appeal in **Muwema and Mugerwa Advocates and Solicitors versus Shell (U) Ltd and 10 Others, Court of Appeal Civil Appeal number 18 of 2011**. Counsel relied on a copy of the interim order of the High Court dated 21 August 2012 issued against the Plaintiff and Uganda Revenue Authority. The interim order was subsequently replaced by a temporary injunction dated 2 November 2012. The effect of the interim order and temporary injunction order inter alia was to order Uganda Revenue Authority to detain and preserve all the suit containers belonging to the plaintiff containing "Tiger head" batteries until final determination of HCCS number 333 of 2012. The defendant complied with the order by detaining and preserving the suit property. Counsel for the defendant further contended that the effect of the plaintiff's suit is to force the defendant to release the suit goods before HCCS number 333 of 2012 is determined. The order of the

temporary injunction is still subsisting and there has been no application by way of revision, review or appeal preferred by the plaintiff against the temporary injunction. Furthermore the defendants counsel contended that the suit was incompetent because it purports to compel the defendant to commit contempt of court. In other words the plaintiff was suing the defendant for compliance with a court order. For the same reason, this suit discloses no cause of action against the defendant and ought to be dismissed with costs. The defendants counsel relied on the provisions of order 7 rule 11 (a) of the Civil Procedure Rules and the case of **Auto Garage versus Motokov** [1971] EA at page 514 particularly the decision of the Court of Appeal on the essential elements of a cause of action. Furthermore counsel referred to the judgement of Salmon LJ in **Jenison versus Baker** (1972) 1 All ER at page 997 particularly pages 1001 where he held that contempt of court may consist of refusing to obey an order of the court for the submission that the plaintiff was trying to force the defendant to commit contempt of court through disobedience of a court order. Counsel also relied on the case of **Stanbic Bank (U) Ltd, Jacobsen Uganda Power Plant Company Ltd versus the Commissioner General Uganda Revenue Authority in M.A. No. 0042 of 2010 arising from 0479 of 2010** where honourable lady Justice Irene Mulyagonja held that disobedience of civil court orders ought not to be permitted by the courts and amounts to contempt of court.

The defendants counsel also maintained that the dismissal of the plaintiff's suit against the defendant would not prejudice the plaintiff because the plaintiff can fully defend its rights under **HCCS No. 333 of 2012** and the defendant is willing to comply with any court order issued pursuant to that suit. Finally counsel concluded that in the present suit, the defendant cannot be held liable for violating the plaintiff's right because the defendant complied with a court order and therefore there was no sustainable cause of action against the defendant. By the same token the suit was a nullity and should be dismissed with costs against the plaintiff.

In reply the plaintiff's counsel submitted that the plaintiff's suit against the defendant is for compensation for goods seized and still under the control of the defendant and damages and costs as a result. He submitted that the plaintiffs claim is for demurrage for the amount of the seizure of two motor vehicles which were carrying the batteries and demurrage for the two containers in which the said batteries were contained. This was for the period second of August 2012 until when the goods were released on 22 February 2013.

Firstly the plaintiff's counsel submitted that preliminary objections consist of a point or points of law which has/have been pleaded and which if argued as a preliminary point may dispose of the suit. Preliminary points of law cannot be raised if facts are to be ascertained. In such cases, the court will only peruse the pleadings and no more. Counsel pointed out that the plaintiffs goods were seized on 2 August 2012 being 19 days before the interim order was issued and served on the defendant. The date when the plaintiff's goods were seized by the defendant was admitted in the joint scheduling memorandum of the parties. Counsel further contended that the plaintiff's preliminary objection is based on the court order and is therefore frivolous and vexatious according to the definition or meaning of what amounts to frivolous and vexatious actions held

in the case of **Republic versus Dunn [1965] EA 467 at page 569** where Sir John Ainsley CJ held that the term imports something more than lack of serious thought and at the least, quite thoughtless and stupid. Counsel further referred to the case of **R versus Ajit Singh [1957] EA 822 at 825** for the same definition of what amounts to frivolous and vexatious actions.

Plaintiff's counsel contends that the defendant's preliminary objections on the basis of the court order is frivolous and vexatious as the plaintiffs goods, containers and two motor vehicles were seized way back before the court order was served on the defendant and which orders since abated as a result of the disposal of the head suit HCCS number 333 of 2012. Consequently the authorities of **Housing Finance Bank Ltd and Another versus (supra) and that of Muwema and Mugerwa Advocates and Solicitors versus Shell Uganda Limited and 10 Others** (supra) are inapplicable to the circumstances of the present suit because the plaintiffs vehicle and goods were seized before the interim order relied upon by the defendant. Furthermore the order did not authorise seizing of motor vehicles and two containers for a period of one and six months respectively for which the plaintiff seeks demurrage. Counsel further contended that the court order did not retrospectively validate an otherwise unjustified seizure of the plaintiffs property. Consequently the objection should be overruled with costs.

On the issue of whether the plaintiff's suit discloses a cause of action against the defendant, the plaintiff's counsel submitted that the preliminary objection in that regard was also misconceived, preposterous and should be overruled. Counsel relied on the definition of a cause of action in the case of **Major General Tinyefuza vs. Attorney General**, Constitutional Appeal number 1 of 1997 and the case of Ismail Serugo versus Kampala City Council and another. The cause of action has three essential elements in the pleading namely the existence of the plaintiffs rights; the violation of that right and the liability of the defendant for the violation. The plaintiff's pleading in this case has all the three elements of a cause of action namely the fact that goods were seized by the defendant on 2 August 2012. The plaintiff's rights in the goods were thereby violated by the seizure thereof and the defendant is responsible. Finally counsel submitted that it is trite law that no suit ought to be summarily dismissed unless it is hopeless, without the full facts of the case being adduced in evidence. In the premises counsel prayed that the court dismisses the plaintiff's suit with costs.

In rejoinder, the defendants counsel submitted that the court does not issue orders in vain. Once the party knows of an order, whether null and void, irregular or regular, he or she cannot be permitted to disobey it. Counsel submitted that the court should rely on the case of Muwema and Mugerwa Advocates and Solicitors versus Shell (U) Ltd and 10 others Court of Appeal Civil Appeal Number 18 of 2011. Counsel reiterated submissions that by the time the plaintiff's goods were seized by the defendant, Guangzhou Battery Group Company Ltd had commenced HCCS number 333 of 2012 in which it sought an injunction to prevent release of the goods by the defendant. By the time of the interim order, the defendant had already released 4 containers out of the 6 containers belonging to the plaintiff and only two containers were seized by the defendant following the court order.

Secondly, the defendant had pleaded that it was raising a preliminary objection to the suit in paragraph 5 of its written statement of defence. In addition order 6 rules 28 of the Civil Procedure Rules permits a point of law to be argued which may dispose of the suit at or after the hearing.

Counsel further submitted on the question of damages and costs. However at this stage of the proceedings, the court is dealing with the point of law raised by the defendant on the competence of the suit and the question of damages cannot arise and the court will not deal with it.

### **Ruling**

I have carefully considered the pleadings of the parties, the admitted facts and documents and written submissions of both counsels on the agreed point of law.

The basis of the preliminary objection or point of law is the contention that the defendant complied with a court order granting an injunction restraining the defendant from releasing the plaintiffs goods pending final disposal of the suit. While the suit challenges the impounding of the goods.

The documents admitted by the parties during the scheduling conference show that on 21 August, the registrar of the Commercial Court Division issued an interim order in an application by Guangzhou Tiger Head Battery Group Company Ltd against the current plaintiff and Uganda Revenue Authority as respondents in miscellaneous application number 480 of 2012 arising from miscellaneous application number 479 of 2012 and also arising from HCCS No 333 of 2012. The interim order was served on Uganda Revenue Authority on 21 August 2012 at 12:30 PM. Specifically the interim order provided that containers numbers TTNU 326 8736, TRLU 292 4823, FSCU 356 3820, ECMU 166 7567, TRLU 966 2427 and CMAU1395595 and or other containers belonging to the first defendant contending "Tiger Head" batteries currently in the hands and control of the second respondent be detained and preserved by the second respondent (the defendant) until final determination of the main application. The first respondent in that order is the plaintiff in this suit while the second respondent in the court order is Uganda Revenue Authority. The interim order presupposed that the goods were in the hands of Uganda Revenue Authority at the time it was issued.

It is an agreed fact that the plaintiff imported certain goods namely six containers of "Tiger Head" batteries from the People's Republic of China with each container containing 1100 cartons of Tiger head batteries at the beginning of the month of August 2012. On the 20th of May 2013 Counsels agreed in court that the goods were impounded around 3 August 2012 and court orders came on or about 20<sup>th</sup> August 2012. The interim order admitted in evidence however shows that the interim order was issued on 21 August 2012. It was also served on Uganda Revenue Authority on 21 August 2012. Consequently it is a question of fact that the goods were impounded about 18 days or so before the interim court order was issued. The plaintiff's suit was filed on 1 November 2012 against the Commissioner Customs Uganda Revenue Authority. The

interim order was however issued in **HCCS No. 333 of 2012** between **Guangzhou Tiger Head Battery Group Company Ltd and the Plaintiff and Uganda Revenue Authority**. Subsequently, a temporary injunction was granted on the same terms on 19 October 2012. The admitted temporary injunction order is dated 19<sup>th</sup> of October 2012 and was before his Lordship honourable Mr Justice Wilson Masalu Musene before whom the main suit HCCS No 333 of 2012 was for trial.

The temporary injunction order provides as follows:

*"(a) A temporary injunction doth issue restraining the first respondent from importing and/or offering for sale, goods that infringed on the plaintiff/applicant's trademark number 19462 and/or passing off batteries that include but are not limited to "Tiger head" batteries not being of the plaintiff/applicant's manufacture pending the determination of HCCS number 333 of 2012.*

*(b) That Containers Numbers TTNU 326 8736, TRLU 292 4823, FSCU 356 3820, ECMU 166 7567, TRLU 966 2427 and CMAU 139 5595 and all other containers belonging to the first defendant contending "Tiger Head" batteries currently in the hands and control of the second respondent be detained and preserved by the second respondent until final determination of HCCS number 333 of 2012.*

*(c) The costs of the application shall abide the outcome of the main suit..."*

It is presumed under the order that the property described in the order were in the custody of the defendant/Uganda Revenue Authority. Secondly the order was directed at the plaintiff/Incargo Freighters Agents Ltd which is the first respondent in the application with Uganda Revenue Authority as the second respondent. The other point to be deduced from the temporary injunction order is that it dealt with alleged infringement of Trademark number 19462 of the applicant therein. The order was therefore presumably issued under the Trademarks Act which prohibits any infringement of a registered trade mark.

I have further considered the agreed facts contained in the joint scheduling memorandum of the parties. The documentary evidence is at variance with the agreed fact that on 19 October 2012, the defendant was served with an order of a temporary injunction. The documents admitted shows that Uganda Revenue Authority received the temporary injunction order on 5 November 2012. Whereas the order was issued by his Lordship honourable Justice Wilson Masalu Musene on 19 October 2012, it is apparent that it was formally issued by the Registrar on 2 November 2012. It is apparent on the face of a copy of the admitted document that it was signed by the registrar on 2 November 2012. Consequently, it can only be presumed that the defendants were present in court when the order was issued on 19 October 2012. However there is not explicit agreed fact about that and it cannot be taken as proved.

Last but not least I have considered the agreed issue recorded by the court on 20th of May 2013 which is whether the impounding of the goods by the defendant is illegal. It was also an agreed fact that the goods were impounded before the interim order was issued. In fact the goods were impounded around the 3<sup>rd</sup> of August 2012 whereas the court order was issued on 21 August 2012 and the subsequent order which is the temporary injunction order was issued on 19 October 2012 and served in November 2012.

Several other documents were admitted in evidence. The documents include a Bill of lading, the declaration of the plaintiff on 26 July 2012, an assessment notice dated 31<sup>st</sup> July 2013 exhibit P3. A letter addressed to the defendant by the plaintiffs former lawyers exhibit P9. Customs enforcement case report form dated 2 August 2012 exhibit P10. Furthermore there was a request for analysis of the goods dated 27<sup>th</sup> of August 2012. Lastly I assume that it is within the knowledge of counsels that when goods are imported, they may be held by the defendant's officials pending clearance of customs duties by the importer of the goods. For purposes of this presumption, it is not necessary to set out the provisions of the East African Community Customs Management Act, 2004. Suffice it to mention that under section 16 thereof, imported goods shall be subject to customs control. Therefore it would be necessary to establish the circumstances under which the goods were held or impounded on the 2<sup>nd</sup> or 3<sup>rd</sup> of August 2012 before the interim order was issued.

Order 6 rules 28 and 29 of the Civil Procedure Rules deals with pleadings on points of law and the determination of a suit on the basis of a point of law. Order 6 rule 28 provides that:

*“Any party may be entitled to raise by his or her pleading any point of law and any point of law so raised shall be disposed of by the court at or after the hearing. Except that by the consent of the parties, or by the order of the court on the application of either party, the point of law may be set down for hearing and disposed off at any time before the hearing.”*

The rule deals with points of law raised by the pleadings. However by consent of the parties, a point of law agreed upon may be set up for hearing and disposed off at any time before the hearing. In this case, the parties consented to the determination of a point of law which is whether the impounding of the goods of the plaintiff was illegal. Paragraph 5 of the written statement of defence of the defendant is to the effect that the defendant would at the commencement of the trial raise a preliminary objection that the suit is bad in law, misconceived and discloses no cause of action and should be dismissed with costs. However it is apparent that the preliminary point is not directly based on the pleadings but partly on facts agreed to during the scheduling conference. In those circumstances it is unnecessary to consider the doctrine for determination of whether a plaint discloses a cause of action which is determined on the basis of the plaint only and on the assumption that the facts averred are true.



The provisions of order 7 rule 11 of the CPR on which I was addressed are therefore inapplicable as submitted by the plaintiff's Counsel.

However, a point of law may be raised under order 6 rule 28 by pleadings and the court may determine it under order 6 rule 29 of the Civil Procedure Rules.

Order 6 rule 29 provides that where the court is of the opinion that a decision:

*“on the point of law substantially disposes of the whole suit, or of any distinct cause of action, ground of defence, setoff, counterclaim or reply, the court may thereupon dismiss the suit or make such order in the suit as may be just.”*

The first conclusion to be made is that order 6 rule 29 of the Civil Procedure Rules is of general application in that it permits the determination not only of the suit but any ground of defence, set off or counterclaim or reply. Order 7 rule 11 on the other hand deals with disclosure of a cause of action by the plaintiff. After carefully considering the agreed facts and documents, the circumstances and facts under which the plaintiff's goods were impounded on or about the 3rd of August 2012, if any, have not been clearly established by evidence. This is partly because the goods were impounded before the interim court order was issued. Secondly the interim court order took effect or was issued on the 21<sup>st</sup> of August 2012. Therefore on what basis were the goods impounded between the 3rd and 21st of August 2012? Secondly, the interim order and subsequent temporary injunction order was issued against Uganda Revenue Authority and the plaintiff. Moreover it was issued in an interlocutory application in HCCS No 333 of 2012. It is not clear from the evidence as to what happened to that suit. Initially several questions begged for consideration and without evidence. For instance is the subject matter of that suit the same as the subject matter of the current suit? Should the provisions of section 7 of the Civil Procedure Act which deal with the doctrine of res judicata apply in this case? Or is it a case where the provisions of section 6 of the Civil Procedure Act which deal with the stay of subsequent suits based on the same subject matter apply? HCCS No 333 of 2012 seems to be about alleged infringement of a Trademark of the plaintiff namely Guangzhou Tiger Head Battery Group Ltd. The basic agreed facts do not give any details as to the status of the HCCS No 333 of 2012. The counsels of the parties only presented the agreement of the parties that the goods were released on 22 February 2013 from which the court can infer that the court orders abated. However the inference may not be true. Most importantly, the impounding of the goods or the detention of the goods subsequent to the interim court order of 21 August 2012 and 19 October 2012 dealt with the goods the subject matter of the current suit. Why should the question of the detention of the goods be the subject of another suit? And why was the suit brought against the Commissioner of Customs Uganda Revenue Authority? What are the facts that justify the bringing of a separate suit on the question of impounding of the goods that could not be handled in HCCS number 333 of 2012? It must be noted that the plaint is quite explicit that it deals with the impounding of the goods on the 2<sup>nd</sup> day of August 2012 by the Commissioner of Customs URA, yet Uganda Revenue Authority was a defendant in that suit.

Finally it is clear that there are very many facts or matters that need to be clarified from evidence for the point of law to be justly and effectually determined. This is primarily because the goods of the plaintiff were subject to customs control and the circumstances for impounding them before the interim court order of 21 August 2012 need to be established. I therefore agree with the submissions of the plaintiff's counsel that this suit should not be determined on a point of law without all the relevant facts in support thereof. Whereas the defendant may argue the point of law on the basis of the detention of the goods after 21 August 2012, it is agreed that the goods were impounded around the 2<sup>nd</sup> or 3<sup>rd</sup> of August 2012. Moreover the interim order was issued in another suit the outcome of which has not been clearly agreed upon. It is further critical that the court is appraised about the outcome of HCCS number 333 of 2012 by the parties and not from the record. I must point out that the parties included among the documents a consent order between **All Sisters Company Ltd versus Guangzhou Tiger Head Battery Group Company Ltd HCCS number 128 of 2012** in which a consent order was issued. No connection was made between that order and HCCS number 333 of 2012. In any case, the suits are between different parties from the parties in the current suit and court needs to be addressed about that. All in all several issues arise that need clarification and particularly for the court not to issue any conflicting order to that in other suits. Finally I obtained a copy of the judgement of the High Court in HCCS number 333 of 2012 which was apparently delivered on the 24<sup>th</sup> of May 2013. It is imperative that counsels are given an opportunity to address the court on the import of the final judgement in that suit. It is clear from the conclusion of the honourable judge justice Wilson W M Musene that he rejected the remedy of accountability to the plaintiff in the suit and ordered that Uganda revenue authority releases the impounded goods to the first defendant. Most importantly he declined to award general damages of Uganda shillings 300,000,000/= to the defendant (who is the plaintiff in the suit). It must be noted that the subject matter of the suit is exactly the same as the subject matter in the suit. I further note that the plaintiffs claim inter alia is for demurrage charges with effect from 2 August 2012 until the release of the goods on 22 February 2013. On the other hand the defendant maintains that 4 containers were released and the matter in contention consists of only two containers. Which goods were released on 22 February 2013? And would goods were the subject matter of the final court order for the release by Uganda Revenue Authority of the goods? Moreover the final order was issued on the 24<sup>th</sup> of May 2013. Can such a jumble of facts give a good foundation for the determination of a point of law?

The object of order 6 rule 28 and 29 of the Civil Procedure Rules is to expedite the proceedings if the case can be decided on a point of law without the necessity of adducing evidence. In such cases, it should be possible to decide the point of law without any remaining factual controversy relevant to the determination of the matter or issue. The point of law should substantially dispose of the suit, any distinct cause of action or the entire suit. It should be possible to determine the point of law without the requirement of evidence or on the basis of agreed facts only. If there is a need for evidence which is yet to be proved, then the determination of the point of law would be premature and should abide the final outcome of the suit.

The object of order 6 rule 28 and 29 of the Civil Procedure Rules is explained by the East African Court of Appeal at Nairobi in the case of **NAS Airport Services Limited v The Attorney-General of Kenya [1959] 1 EA 53**. The lead judgement of the court was delivered by Windham JA. At page 58 is held as follows:

*"Clearly the object of the rule is expedition. But to achieve that end the point of law must be one which can be decided fairly and squarely, one way or the other, on facts agreed or not in issue on the pleadings, and not one which will not arise if some fact or facts in issue should be proved; for in such a case the short-cut, as is so often the way with short-cuts, would prove longer in the end."*

It is clear from the holding that a point of law should not be determined if some facts or facts in issue are yet to be proved or remain to be proved. Secondly, the Court of Appeal held that the rule should be sparingly used and only in exceptional circumstances where the facts are clear cut and there is no room for evidence. At page 60 the held as follows:

*"In brief, the procedure under O. 6, r. 27 is a short-cut which should be sparingly used, and only in exceptional circumstances where the facts relevant to the point of law to be set down are so clear-cut on the pleadings that there is no room for evidence upon any fact pleaded which would assist in the decision of that point of law, or which fact, if decided in one way, would result in the point no longer arising."*

From the issues I have raised above, it is apparent that there is need for additional evidence before the point of law raised by the defendant can be determined. In those circumstances, it is premature to decide the point of law and the same is accordingly stayed pending the hearing of the suit on merits by adducing the necessary evidence. The costs of the preliminary point of law shall abide the final outcome of the suit because its determination has been stayed. The parties would be free to address the court again on whether the goods were lawfully impounded by the defendant after adducing the necessary evidence for and against the suit and during their final submissions.

Ruling delivered on the 7<sup>th</sup> of August 2013

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

George Spencer for the Plaintiff

Angela Nairuba Mugisha for the defendant

Plaintiffs Managing Director Fred Byamukama in court

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

7<sup>th</sup> of August 2013