

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

**CIVIL SUITS NO. 240 OF 2023; NO. 305 OF 2023 AND NO. 345 OF 2023**

**MALKARA BIRLIK SUT**  
**VE SUT MAMULLERI A.S.:..... PLAINTIFF**

**VERSUS**

- 1. SKYROCKET AGENCY CO. LTD**
- 2. THE COMMISSIONER OF CUSTOMS**  
**UGANDA REVENUE AUTHORITY**
- 3. ADMIRALS TRADING LLC**
- 4. ADIM FOODS AND FRUITS SUPPLIES CO.LTD**
- 5. MR. DUMBA HADADI**
- 6. GOOD BROTHERS INTERNATIONAL**  
**LIMITED (W04444) :.....DEFENDANTS**

**Before: Hon. Lady Justice Cornelia Kakooza Sabiiti**

**JUDGMENT**

**Introduction**

This is a Judgment in respect of three consolidated suits namely; HCCS No. 240 of 2023; HCCS No. 305 of 2023 and HCCS No. 240 of 2023. The three suits were consolidated by this Court to expedite the hearing since they are in respect of the same subject matter which are perishable goods, involve the same parties and are seeking related remedies. A summary of the three suits is as follows:

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(a) **HCCS 240 of 2023**: MALKARA BIRLIK SUT VE SUT MAMULLERI A.S against ADMIRALS TRADING LLC, ADIM FOODS AND FRUITS SUPPLIES CO. LTD, Mr. DUMBA HADADI and GOOD BROTHERS INTERNATIONAL LIMITED ICD filed on 14/03/2023. This suit is seeking remedies of declaration of breach of contract, orders to pay the contractual sum of \$82,500, permanent injunction from clearing, claiming or dealing with the goods until full payment, damages, interest and costs

(b) **HCCS No. 305 of 2023**: SKYROCKET AGENCY CO. LTD against COMMISSIONER OF CUSTOMS, URA filed on 17/04/2023. This suit is seeking remedies of orders compelling URA to finalize the process of clearance of the goods and to release them to the plaintiff on payment of the taxes, damages, interest and costs.

(c) **HCCS No. 345 of 2023**: MALKARA BIRLIK SUT VE SUT MAMULLERI A.S filed against SKYROCKET AGENCY CO. LTD and COMMISSIONER OF CUSTOMS, URA filed on 28/04/2023. This suit is seeking remedies of a declaration that the goods are the property of the plaintiff, orders for URA to release the container to the plaintiff for re-export, an injunction stopping URA from breaking the seal, clearing or releasing the consignment to any other party, damages, interest and costs

After reviewing the different claims and defences of the parties and in order to streamline the hearing of the three suits it was agreed among the parties that MALKARA BIRLIK SUT VE SUT MAMULLERI A.S be the Plaintiff during the consolidated hearing. While the other five other parties are the defendants namely: SKYROCKET AGENCY CO. LTD (1<sup>st</sup> defendant); COMMISSIONER OF CUSTOMS URA (2<sup>nd</sup> Defendant); ADMIRALS TRADING LLC (3<sup>rd</sup> defendant); ADIM FOODS AND FRUITS SUPPLIES CO. LTD (4<sup>th</sup> Defendant); Mr. DUMBA

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HADADI (5<sup>th</sup> Defendant) and GOOD BROTHERS INTERNATIONAL LIMITED ICD (6<sup>th</sup> defendant). All the claims of the parties were incorporated under the framed issues for determination by the court.

### **Background**

The facts giving rise to the claim of MALKARA BIRLIK SUT VE SUT MAMULLERI A.S (hereinafter referred to as the Plaintiff) are that; the Plaintiff was contacted by Admirals Trading LLC, the 3<sup>rd</sup> Defendant, to supply 25,000kg of Whey protein concentrate 34% from Turkey to Uganda in favour of the 4<sup>th</sup> Defendant, Adim Foods and Fruits Supplies. On the 17<sup>th</sup> November 2022, the Plaintiff issued a proforma invoice No.220336 in favour of the 3<sup>rd</sup> Defendant on their agreement for the sale of the consignment. According to the terms specified in the proforma invoice the Plaintiff would supply 25,000kg Whey protein concentrate 34% at a unit price of \$3,410, resulting into a total amount of United States Dollars Eighty-Five Thousand Two Hundred and Fifty (\$85,250). The shipment was to be transported from Istanbul, Turkey to Mombasa, Kenya and then onward to Uganda. Subsequently through an email communication, the 3<sup>rd</sup> Defendant requested the Plaintiff to deliver the consignment and shipping documents directly to the 4<sup>th</sup> Defendant which was done. To date, the Plaintiff has not received payment from the 3<sup>rd</sup> Defendant for the delivered goods.

On 17<sup>th</sup> February, 2023, Mr. Dumba Hadadi, the 5<sup>th</sup> Defendant, received the shipping documents for and on behalf of the 4<sup>th</sup> Defendant through DHL. On 2<sup>nd</sup> March, 2023, the Sky Rocket Agency Co Ltd, the 1<sup>st</sup> Defendant, purchased a consignment of a one 40 ft. container of Whey Protein Concentrate 34% (Powdered milk) comprising 1000 bags from the 5<sup>th</sup> Defendant, Dumba Hadadi trading as the 4<sup>th</sup> Defendant, Adim Foods & Fruits Supplies. The 1<sup>st</sup> Defendant received the original documents of the title including the Bill of Lading, Packaging List, Analysis report and Invoice.


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On 11<sup>th</sup> March 2023, the Container No. MRSU369933 comprised of the product arrived in Uganda and currently, the Good Brothers International Ltd, the 6<sup>th</sup> Defendant, holds custody of the container at its premises located at Namanve.

Upon non receipt of payment for the goods, the Plaintiff applied and was granted permission to re-export the goods back to Turkey on 5<sup>th</sup> April, 2023 by the 2<sup>nd</sup> Defendant who after declined the re-exportation.

After the purchase, the 1<sup>st</sup> Defendant commenced the process of clearing the acquired goods in Mombasa. However, on the 29<sup>th</sup> of March, 2023 as the 1<sup>st</sup> Defendant's clearing agent was performing the verification process to deposit the cargo into the bonded warehouse and facilitate the release of the container back to the shipping line, the process was halted by the 2<sup>nd</sup> Defendant's officers following an interim Court Order vide MA No. 373 of 2023 obtained by the Plaintiff directing the 2<sup>nd</sup> Defendant not to release or break the seal of the consignment.

The case of the 1<sup>st</sup> defendant, SKYROCKET AGENCY CO. LTD, is that under a Sale Agreement on 2<sup>nd</sup> March 2023, it purchased the suit goods comprising of a consignment of goods described as Whey Protein Concentrate 34% (Powdered milk) comprising 1000 bags in a one 40 ft container from the 5<sup>th</sup> Defendant, Dumba Hadadi trading as Adim Foods & Fruits Supplies. The seller duly handed over the original documents of title to the 1<sup>st</sup> Defendant to wit; the bill of lading, Packing list, Certificate of Analysis report, Commercial Invoice and Certificate of Insurance. The 1<sup>st</sup> Defendant commenced the process of clearing the suit goods that were transported from Mombasa and booked into Good brothers ICD bond W0444 on 11<sup>th</sup> March, 2023. However, the 2<sup>nd</sup> Defendant's agents at the said ICD bond frustrated the 1<sup>st</sup> Defendant's efforts in having the said goods cleared without any justifiable cause.





The case of the 2<sup>nd</sup> defendant, COMMISSIONER OF CUSTOMS URA, is that it claims no legal ownership over the suit goods which are in their in custody by virtue of their mandate as the Government tax collection agent and are being held by the 6<sup>th</sup> defendant Good Brothers Bond No. W00444 for the same reason. That more than one party is claiming ownership of the suit goods to wit; Malkara Birlik Sut Ve Sut Mamulleri A.S and Sky Rocket Agency Co Ltd. The 2<sup>nd</sup> defendant adduced evidence vide an Interim Court Order from Misc. Application No. 373 of 2023 arising from HCCS No. 240 of 2023 stopping them from clearing or dealing with the suit goods in container No, MRSU 369933. The 2<sup>nd</sup> defendant stated that it is awaiting the determination of the three pending suits to establish the rightful owner to enable the 2<sup>nd</sup> defendant to collect taxes and release the goods before the same get contaminated/exposed due to their perishable nature.

The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants did not file defences after proof of service on them as evidenced by the affidavits of service on court record. The court made an order for the suit to proceed ex parte as against the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants under Order 9 rule 11 (2) of the Civil Procedure Rules.

### **Representation**

The Plaintiff was represented by M/s Nagawa Associated Advocates. The 1<sup>st</sup> defendant was represented jointly by M/s Reeve Advocates and M/s Katuntu & Co Advocates. The 2<sup>nd</sup> defendant was represented by their Legal Services and Board Affairs Department.



### **Hearing**

The burden of proof remains on the plaintiff to prove the case on the balance of probabilities as held in the case of **Yoswa Kityo vs Eriya Kaddu [1982] HCB 58**.

At the hearing the Plaintiff led one witness, Mahir Hikmet Battal as PW1 who gave evidence via an audio-visual link from Turkey. The 1<sup>st</sup> defendant led one witness Dokoria Herbert as DW1. The 2<sup>nd</sup> defendant opted not to call any witness.

### **Issues**

The Court adopted the following issues for determination:

1. Whether the suit filed by the Plaintiff is competent before this Honorable Court?
2. Who is the lawful owner of the goods in container No. MRU 369933 and whether the plaintiff holds a lien over the goods?
3. Whether the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants are liable for breach of contract?
4. What remedies are available for the parties?

### **RESOLUTION**

#### **Issue No.1: *Whether the suit filed by the Plaintiff is competent before this Honorable Court?***

Counsel for the 1<sup>st</sup> defendant raised a preliminary point of law that was framed as the 1<sup>st</sup> issue to the effect that the instant suit is incompetent before this Court and should be dismissed since it was filed on the instructions of PW1 who is the Foreign Trade Manager of the plaintiff company and not on the authority of a resolution of the directors of the said company. He cited the case of **Bugerere Coffee Growers Ltd vs Sebadduka & Anor [1970] IEA 147**, where court observed that; "*When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors' meeting and recorded in the minutes*". The said principle was repeated in the cases of

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**Makerere Properties Ltd vs Mansukhlal Ranji Karia; HCCS No.32 of 1994 and Rubaga Building Company Ltd vs Gopal Devsi Vekaria & Virbhai Nanji Bechar Kerai HCCS No. 0534 of 2014.**

In response, counsel for the plaintiff submitted relying on Order 29 rule 1 of the Civil Procedure Rules that an entity can act through its principal officer, director and cited the case of **Friecca Pharmacy Limited versus Anthony Natif Misc. Application No. 497 of 2019 arising from HCCS No. 50 of 2019** where it was held that; *"...The law presumes that certain categories of employees have ostensible authority to act for the Company"*. That in this instant case PW1 the Foreign Trade Director testified that he is responsible for imports and exports in the Plaintiff company where he has worked for the last 20 years, well conversant with the said transaction and that he duly represented the plaintiff company and instructed the plaintiffs lawyers to file the matter in court.

Counsel for the plaintiff, to support the competency of the instant suit plaintiff company that is a foreign company incorporated in Turkey, cited the case of **Krone Uganda Limited Vs Kerilee Investments Limited (Civil Miscellaneous Application No. 306 of 2019) [2021] UG CommC16** where Hon, Justice Wamala held that there was no legal requirement for a foreign company to register under the Companies Act, 2012 before it could institute legal proceedings or carry out business in Uganda.

During cross examination PW1 stated that he was a Director of the plaintiff company and also the Head of the Foreign Trade Department a position he had held for the last 20 years and was conversant with the facts of the case. From the evidence adduced PW1 was the official of the plaintiff company corresponding to the 3<sup>rd</sup> defendant with regards to the transaction making him knowledgeable to depose to the facts of the case. Further the position held by PW1 as Director of the Department

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of Foreign Trade qualifies him as principal officer of the said company as provided under Order 29 rule 1 of the Civil Procedure Rules with sufficient authority to instruct legal proceedings to be instituted on behalf of the plaintiff company. There was evidence adduced of the legal status of incorporation of the plaintiff company in Turkey and this supports the legal capacity of the plaintiff company to enforce its rights and claims in Uganda. I therefore find no merit in the objection raised by the 1<sup>st</sup> defendant and it is overruled.

Issue No.1 is answered in the affirmative.

**Issue No.2: Who is the lawful owner of the goods in container No. MRU 369933 and whether the plaintiff holds a lien over the goods?**

Counsel for the plaintiff submitted that whereas the 1<sup>st</sup> defendant in its pleadings stated that it purchased the goods on 2<sup>nd</sup> March 2023 under a Sales Agreement with the 5<sup>th</sup> defendant trading as Adim Foods and Supplies, DW1 during cross examination admitted that in February 2023, prior to the purchase, the 1<sup>st</sup> defendant conducted a search on Adim Foods and Supplies and learnt that it was not registered and had ceased being a business on 21<sup>st</sup> February 2023 as indicated in the certified copy of the notice of cessation of business admitted as PEX.18. Counsel submitted that Section 2(1) (b) of the Business Names Registration Act, requires that any person carrying out business in a name that does not consist of his or her true surname to register the same and cited the case of **Chicken Tonight Limited vs Kikomeko Aminah T/a Agro-Tech Enterprises Ltd Misc. Application No, 408 of 2023 arising from HCCS No. 1070 of 2023** where it was held that contracts entered into under unregistered business name are not enforceable. That this rendered the Sales Agreement between the 1<sup>st</sup> and 5<sup>th</sup> defendant T/A as Adim Foods & Fruits Supplies illegal, and void ab initio and therefore neither party can acquire any rights therefrom.





Counsel for the 1<sup>st</sup> defendant in response submitted that evidence was adduced by DW1 that the 1<sup>st</sup> defendant bought the suit goods vide a Sale Agreement (DEX.2) comprising of a consignment of goods described as Whey Protein Concentrate 34% (Powdered milk) comprising 1000 bags in a one 40 ft container from the 5<sup>th</sup> Defendant, Dumba Hadadi trading as Adim Foods & Fruits Supplies on 2<sup>nd</sup> March, 2023. The seller duly handed over the original documents of title to the 1<sup>st</sup> defendant namely; the Bill of Lading (PE3), Packing list (PEX.3), Certificate of Analysis report (DEX.4), Commercial Invoice (PEX.2 and Certificate of Insurance (DEX.5). That DW1 in his cross examination testified that the 1<sup>st</sup> defendant duly carried out due diligence by confirming the authenticity of the bill of lading and the existence of the goods at Mombasa Port before paying for the same. Counsel cited Section 2 (1)(b) of the East African Community Customs Management Act, that defines owner to include any person in possession of or beneficially interested in or having control of power of disposition over goods. He further submitted that Section 1(1)(b) of the Sale of Goods and Supply of Services Act defines a document of title to include a Bill of lading and cited the case of **All American Hardware Uganda Limited V Uganda Revenue Authority TAT Application No. 23 of 2019 and Misc Application No. 39 of 2020**, where it was held that once a vendor sells his items to a purchaser, the title passes to the latter.

With regard to the legal implications of a Bill of lading, counsel for the 1<sup>st</sup> defendant quoted the definition in Black's law Dictionary 10<sup>th</sup> Edition p. 199 that defines a bill of lading as follows.

*"A bill of lading may be regarded in three aspects. (1) It is a receipt given by the master of a ship acknowledging that the goods specified in the bill have been put on board, (2) It is the document that contains the terms of the contract for the carriage of the goods agreed and the ship-owner (whose*

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*agent the master of the ship is); and (3) It is a 'document of title' to the goods of which it is the symbol... "*

Counsel further cited the case of **Ross T. Smyth & Co. Limited V T.D Bailey, Sons & Co. (, 1940)3 ALL ER 60** where it was held that the person named as consignee in a bill of lading is deemed to be the owner of the goods listed therein which position was followed in the cases of **Rahima Nagita & 2 Others versus Richard Bukenya & 3 others HCCS 389 of 2010** and **P&O Nedlloyd Uganda Ltd vs Tesco International Ltd C.A. C A, 86/2004** where it was held that the general rule is that the owner of the goods is the person named in the Bill of lading as consignee and that a Bill of lading is a document of title. On the strength of these cases counsel for the 1<sup>st</sup> defendant submitted that since the bill of lading is a document of title and ownership and the 1<sup>st</sup> defendant duly bought the goods from the consignee named in the bill of lading and title passed to the 1<sup>st</sup> defendant who is the lawful owner of the suit goods. That the Sales Agreement indicates that the 1<sup>st</sup> Defendant paid USD 50,000 to the seller who acknowledged receipt by appending his signature and the 1<sup>st</sup> defendant proceeded and paid stamp duty and also paid GGS Logistics USD 6200 for purposes of transport from Mombasa to Kampala, Port handling and clearance.

Counsel for the 1<sup>st</sup> defendant further submitted that a business name is not a legal entity that can contract and this is the reason the 1<sup>st</sup> defendant entered into an agreement with the 5<sup>th</sup> defendant, Mr. Dumba Hadadi who was trading under the style and name of Adim Foods and Fruits Supplies, as indicated on the bill of lading as the consignee.

Counsel for the 2<sup>nd</sup> defendant supported the submissions of the 1<sup>st</sup> defendant and stated that the Plaintiff sold the suit goods to the 3<sup>rd</sup> Defendant and handed over original shipping documents to wit Bill of Lading, Packaging List, Analysis report and Invoice to the 5<sup>th</sup> Defendant for and on behalf of the 4<sup>th</sup> Defendant as per the





instructions of the 3<sup>rd</sup> Defendant. That the Bill of lading specifically named the 4<sup>th</sup> Defendant as the consignee, forming the basis on which on which the 1<sup>st</sup> defendant purchased the consignment from the 5<sup>th</sup> Defendant T/A the 4<sup>th</sup> Defendant. He cited the case of **Copy Lines Ltd Versus Rapid Shipping and Freight Uganda Ltd and another HCCS NO.314 of 2007** where it was held that a Bill of lading is considered a document of title and **Section 1(1) (b) of Sale of Goods and Supply of Services Act, 2018** defines documents of title to include bills of lading. That in the instant case by virtue of possessing the bill of lading, the consignee obtains the right to dispose of the goods, transfer ownership, or exercise control over the goods. That the only duty of the buyer is to ascertain the authenticity of bill of lading and existence of goods before making the purchase, a duty that the 1<sup>st</sup> defendant fulfilled. That since the 4<sup>th</sup> defendant was the consignee and the 5<sup>th</sup> Defendant was claiming to trade as the 4<sup>th</sup> Defendant and possessed the original Bill of lading as a document of title he passed on title to the 1<sup>st</sup> defendant.

I have reviewed the Sale Agreement dated 2<sup>nd</sup> March 2023 (DEX.2) and the two parties are the Dumba Hadadi T/A Adim Foods & Fruits Supplies as the “Seller” and the 1<sup>st</sup> defendant, Sky Rocket Agency Co. Ltd as the “Buyer”. The contract also states that the Seller is the owner of the consignment of the suit goods and the Buyer has paid consideration of USD 50,000 to the Seller who has assigned the property in the goods to the Buyer and has handed over to the Buyer the original Bill of Lading, Invoice, Packaging List, Analysis report and all other supporting documents.

The general rule in the practice of International trade is that the Bill of lading is the document of title and as was held in the case of **Biddell Bros Ltd v E. Clemens Horst & Co Ltd [1911J 1 KB 934, 956-7** where court noted that;

*“By far the most important type of document of title is the bill of lading.*

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*When goods are shipped, the ship owner or his agents deliver to the shipper a bill of lading, and this document in law and in fact represents the goods. Possession of the Bill of lading places the goods at the disposal of the purchaser."*

The said Sale Agreement is also governed by the law of contract. S.10 of the Contracts Act, 2010 provides that a contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound. In the instant case, evidence was adduced as PEX.18 of a Notice of Cessation of Business from Uganda Registration Services Bureau (URSB) stating that the 4<sup>th</sup> defendant, Adim Foods & Fruits Supplies, ceased to carry on business from 21<sup>st</sup> February 2023. This was eight days before the Sale Agreement. In his testimony under cross examination, DW1 the holder of powers of attorney of the 1<sup>st</sup> defendant admitted that as a purchaser they carried out due diligence with URSB and found out that the 4<sup>th</sup> defendant was not registered.

This means that at the time the Sale Agreement was executed the purported Seller did not legally exist and this was a fact in the knowledge of the Buyer. The argument by counsel for the 1<sup>st</sup> defendant that the reason the 1<sup>st</sup> defendant entered into an agreement with the 5<sup>th</sup> defendant, Mr. Dumba Hadadi was because a business name is not a legal entity that can contract is not tenable since the same non-existent business name was included under the Sale Agreement. The Bill of lading mentioned the 4<sup>th</sup> defendant as the consignee and not the 5<sup>th</sup> defendant. Likewise I do not agree with the argument by counsel for the 2<sup>nd</sup> defendant that since the 5<sup>th</sup> Defendant who possessed the original Bill of lading was claiming to trade as the 4<sup>th</sup> defendant who was the consignee then he passed good title to the 1<sup>st</sup> defendant. *CKS*



Under the common law basic principle of *Nemo dat quod non habet* (no one gives who possess not) a seller/transferor cannot give a better title to property than he or she possesses. This principle is reflected in Section 29 of the Sale of Goods and Supply of Services Act, 2018 that provides-

***Sale by person not the owner:***

*(1) Subject to this Act, where goods are sold by a person who is not the owner of the goods, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller's authority to sell.*

Therefore, since the 4<sup>th</sup> defendant who was the consignee mentioned in the Bill of Lading had ceased to exist prior to the Sale Agreement, the 5<sup>th</sup> defendant could not purport to be trading as the 4<sup>th</sup> defendant that was a non-existent entity and claim to have capacity to contract and pass on good title to the 1<sup>st</sup> defendant and the 1<sup>st</sup> defendant could not acquire a better title to the goods if the 5<sup>th</sup> defendant did not have any title in the first place. **Section 4 (c) of the Sale of Goods and Supply of Services** provides for capacity to contract that a person has capacity to buy and sell goods or supply services. "Where that person is not disqualified from contracting by any law."

From the evidence adduced I find that the 5<sup>th</sup> defendant had no capacity to contract which rendered the Sale Agreement illegal. In the case of **Makula International Ltd vs Cardinal Nsubuga, Civil Appeal No. 4 of 1981**, it was held that


*"A court of law cannot sanction that which is illegal. Illegality once brought to the attention of court overrides all questions of pleadings, including any admissions made thereon. No court ought to enforce an illegal contract or*

*allow itself to be made an instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal if the illegality is duly brought to the notice of the court. ”*

Since the resultant Sale Agreement is tainted by illegality it is a nullity and unenforceable. I find that the plaintiff company remains the rightful owner of the suit goods.

***(b) Whether the plaintiff holds a lien over the goods?***

PW1 during cross examination testified that the plaintiff company released the Bill of Lading and other supporting and the consignment in honest belief that they would receive payment for the goods from the 3<sup>rd</sup> defendant. That however they received a forged telegraphic transfer (PEX.7 & PEX.8) and the agreed amount of USD 82,500 was credited nor reflected on the plaintiff's account to-date. He further testified and adduced in evidence emails from the 3<sup>rd</sup> defendant confirming the failure to make payments and advising the plaintiff company to get a new buyer or sell off the suit goods. Counsel for the plaintiff submitted that the plaintiff being an unpaid seller, the Plaintiff remains the lawful owner of the suit goods in container No. MRU 369933 and that the Plaintiff has a right to retain the goods in line with Section 51 of the Sale of Goods and Supply of Services Act.

Counsel for the 1<sup>st</sup> defendant submitted that under Section 26 (f) of the **Sale of Goods and Supply of Services Act** provides where, under the contract, the seller delivers the goods to the buyer or to a carrier or other bailee whether named by the buyer or not, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he or she is taken to have unconditionally appropriated the goods to the contract. Further that **Section 54 (2) (b) Sale of Goods and Supply of Services Act** provides for termination of right of lien and provides thus; 




*“The unpaid seller of goods shall lose his or her lien or right of retention on the goods—*

*(a) when he or she delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;*

*(b) when the buyer or his or her agent lawfully obtains possession of the goods.”*

He further submitted that since the plaintiff did not reserve any right of disposal under the Commercial Invoice with the 3<sup>rd</sup> defendant in the event that the 3<sup>rd</sup> Defendant did not pay for the suit goods the plaintiff unconditionally appropriated the suit goods. Further that the plaintiff has no right of lien over the goods anymore, the same having been delivered to the carrier and the same transmitted to the consignee without reserving any right of disposal.

Counsel for the 2<sup>nd</sup> defendant Counsel for the 2<sup>nd</sup> defendant cited that case of case of **Karim Moding Vs Sulaiman Kabega HCCA No.35 of 2015**, where it was held that the Plaintiff could only exercise the lien if they were still in possession of the goods/ consignment or if the goods were with the 3<sup>rd</sup> Defendant, provided the retention of lien was specifically provided for in the sale agreement. Since the Plaintiff delivered goods to the carrier for purposes of transmission to the 4<sup>th</sup> Defendant and handed over the original documents of title to them, the Plaintiff lost their lien over the goods. He relied on **Section 58 (2) of Sale of Goods and Supply of Services Act** that provides that an unpaid seller’s right of lien or retention or stoppage in transit shall be defeated where a document of title to goods has been lawfully transferred to any person as a buyer or owner and that person, by way of sale transfers the document to a person who takes the document in good faith and for valuable consideration.



In the instant case, as discussed earlier the circumstances under which the 1<sup>st</sup> defendant acquired the original Bill of lading as document of title to the suit goods were tainted by illegality since the holder was a nonexistent entity and the buyer was already aware of this fact having admitted to have found out during due diligence prior to the purchase. The 1<sup>st</sup> defendant did not therefore acquire the suit goods in good faith and the documents of title were not lawfully transferred to the 1<sup>st</sup> defendant.

Issue No.2 is answered in the affirmative.

**Issue No.3: Whether the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants are liable for breach of contract?**

A breach of contract occurs when a party neglects, refuses or fails to perform any party of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. This was held in the case of **United Building Services Ltd Vs Yafesi Muzira T/A Quickest Builders and Co. [2006] UGComm 15** where court held that;

*“A breach of the contract occurs when one or both parties fail to fulfill the obligations imposed by the terms of the contract.”*

It was the evidence of PW1 that the Commercial Invoice dated 25<sup>th</sup> January 2023 (PEX.2) contained the major terms of the agreement of the parties between the Plaintiff and the 3<sup>rd</sup> Defendant. It stipulated under Payment Terms that “25 days after B/L date”. The Bill of Lading (PX.3) was dated 2<sup>nd</sup> February 2023 making the deadline for payment by the 3<sup>rd</sup> defendant 28<sup>th</sup> February 2023. PW1 further testified the Plaintiff was never paid for the goods after almost three months as evidenced by PEX.8, and PEX.16. Counsel for the 1<sup>st</sup> defendant submitted that since the 3<sup>rd</sup> to 5<sup>th</sup> defendants did not file defences it should be taken that they agreed with each and every content of the plaint as regards the breach of contract.



From the evidence adduced I find that the 3<sup>rd</sup> defendant breached the terms of payment as agreed under the Commercial Invoice. However, notwithstanding the omission/failure of the 4<sup>th</sup> and 5<sup>th</sup> defendants to file defences, I find that there was no breach by the 4<sup>th</sup> and 5<sup>th</sup> Defendants since the plaintiff had no contractual relationship with them.

Issue No.3 is answered in the affirmative with respect to the 3<sup>rd</sup> defendant only.

**Issue No.4: Remedies available**

Malkara Birlik Sut Ve Sut Mamulleri A.S, under HCCS No.240 of 2023 and HCCS No.345 of 2023, is seeking remedies of declaration of breach of contract, orders for payment of the contractual sum of \$82,500, declaration that the goods are the property of the plaintiff, orders for URA to release the container to the plaintiff for re-export, an injunction stopping URA from breaking the seal, clearing or releasing the consignment to any other party, damages, interest and costs

Sky Rocket Agency Co Ltd, under HCCS No. 305 of 2023 is seeking remedies of orders compelling URA to finalize the process of clearance of the goods and to release them to the plaintiff on payment of the taxes, damages, interest and costs.

Following the findings under the issues 1-3 above, the claim by Sky Rocket Agency Co Ltd under HCCS No. 305 of 2023 is found to have no merit and their suit is accordingly dismissed. They may however proceed to recover any moneys they paid from the 4<sup>th</sup> defendant, Dumba Hadadi, who appears to have defrauded them by purporting to trade as the non-existent seller.

The Commissioner of Customs URA (2<sup>nd</sup> defendant) and Good Brothers International Limited ICD (6<sup>th</sup> defendant) were sued by Malkara Birlik Sut Ve Sut

Mamulleri A.S and Sky Rocket Agency Co Ltd who were both claiming ownership of the goods. However, the 2<sup>nd</sup> defendant did not make any legal claim over the suit goods which were in their in custody by virtue of their mandate as the Government tax collection agent and were being held by the 6<sup>th</sup> defendant for the same reason. Further the 2<sup>nd</sup> defendant adduced evidence vide an Interim Court Order from Misc. Application No. 373 of 2023 arising from HCCS No. 240 of 2023 stopping them from clearing or dealing with the suit goods in container No, MRSU 369933. In light of this evidence I find that the claims against the 2<sup>nd</sup> and 6<sup>th</sup> defendants have no merit.

I find that the plaintiff has proved its case on the balance of probabilities as against the other defendants. Accordingly, the plaintiff is entitled to some of the remedies prayed for.

In the final result, Judgment is entered for the Plaintiff with the following orders-

1. A declaration is made that the suit goods in container No. MRSU 369933 are the property of the plaintiff.
2. A declaration that the 3<sup>rd</sup> defendant breached the contract with the plaintiff under the Commercial Invoice.
3. The 2<sup>nd</sup> and 6<sup>th</sup> Defendants are ordered to release the suit goods to the plaintiff and/or facilitate their re-export by the Plaintiff after payment of the requisite taxes.
4. A permanent injunction is issued restraining the 2<sup>nd</sup> Defendant from releasing the suit goods in container No. MRSU 369933 to the 1<sup>st</sup> Defendant or any other person party claiming an interest in the goods save for the plaintiff.
5. General damages of UGX 10,000,000 are awarded to the plaintiff.
6. Interest is awarded on the general damages until payment in full.
7. Costs of the suit to the plaintiff.

*CVS*



It is so ordered



**CORNELIA KAKOOZA SABIITI**

**JUDGE**

**Date: 7<sup>th</sup> July 2023**