

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**IN THE MATTER OF WINDING UP OF SOPHIE SHIPPING LOGISTICS LIMITED**  
**T/A SSL LOGISTICS LIMITED**  
**AND**  
**IN THE MATTER OF THE INSOLVENCY ACT 2011**  
**COMPANY CAUSE NO. 28 OF 2015**

**PAN AFRICA LOGISTICS LIMITED       :::::::::::       PETITIONER**

**VERSUS**

**SOPHIE SHIPPING LOGISTICS LIMITED**

**T/A SSL LOGISTICS LIMITED       :::::::::::       RESPONDENT**

**BEFORE: THE HON LADY JUSTICE LYDIA MUGAMBE**

**RULING**

1. This is the ruling in Company Cause No. 28 of 2015. The Petitioner, Pan Africa Logistics Limited petitioned this Court to wind up the Respondent Company on the basis that the Respondent was unable to pay its debt of USD: 76,116.93 (United States Dollars Seventy Six Thousand One Hundred Sixteen and Ninety Three Cents only) owing to the Petitioner and thus insolvent. The Petitioner also prayed for costs to be paid by the Respondent.

2. The Petitioner is represented by Mr. Brian Kaggwa of M/s. Impala Legal Advocates & Consultants and the Respondent is represented jointly by Mr. Caleb Alaka and Mr. Bosco Okiror of M/s. Alaka & Co. Advocates.
3. The Respondent through its affidavits in opposition deposed by Mr. Chadi Ezzedine, the Director of the Respondent and submissions disputes its indebtednesses to the Petitioner and maintains that it is solvent and able to pay any legitimate debt owing to the Petitioner and/or anyone else. The Respondent also raises a preliminary objection which shall be addressed later.
4. Briefly on 1<sup>st</sup> December, 2014 the Petitioner and the Respondent entered into an agreement for freight forwarding services for containerized general cargo with the Petitioner providing these services to the Respondent. The Petitioner contends that between December 2014 and July 2015, it rendered haulage services to the Respondent to the tune of USD: 76,116.93 which the Respondent has failed and/or refused to pay. The Respondent disputes this amount and maintains that the invoices presented to the Respondent were irregularly issued to include amounts which the Respondent is not liable to pay as the delays at the port, demurrage and storage charges were occasioned by the Petitioner and must be paid by the Petitioner.
5. In the preliminary objection the Respondent argues that by virtue of clause 13 of the agreement between the Petitioner and the Respondent, this court has no jurisdiction to hear disputes between the parties. According to the Respondent the correct jurisdiction is the Kenyan courts. In another objection the Respondent contends that the petition is premature before this court as the petitioner did not pursue other avenues outlined in the agreement before coming to court.
6. Clause 13 titled governing law of the agreement between the parties provides that “this agreement shall be **governed by** and **construed in accordance with the laws of Kenya**” (emphasis mine). From a holistic and contextual look at the agreement it was made in Kenya but for freight, shipping and logistics business to be carried out both in Kenya and

outside Kenya. It is for this reason that the Petitioner based in Kenya was contracted to ship merchandise of the Respondent based in Uganda to Uganda.

7. Although it invokes applicability of Kenyan law in case of a dispute, clause 13 does not limit jurisdiction over disputes arising between the parties to the Kenyan courts. In circumstances where the dealings are cross borders, I am reluctant to construe clause 13 as restricting jurisdiction only to Kenyan courts.
8. Clause 3(d) of the agreement provides that “if the customer does not pay the invoiced amounts, the freight forwarder must commence civil action or final and binding arbitration proceedings to recover such invoiced amounts within two months of delivery or tender of delivery of the shipments involved. If the freight forwarder alleges undercharges, or the customer alleges overcharges, duplicate payment, or over collection, notice of such claims or unidentified payments must be given within seven days of receipt of the invoice and **a civil action or arbitration proceedings** must be filed within two months of delivery or tender of deliver of the shipments involved.” (emphasis mine)
9. Nothing in clause 3(d) of the agreement precludes the Petitioner from filing a petition for winding up before some other civil action or arbitration. My understanding is that the petition for winding up is one form of civil action that the Petitioner has available in case of default by the Respondent. So the petitioner rightly adopted the procedure for winding up. The other option available are binding arbitration proceedings. The two preliminary objections are baseless and dismissed.
10. The Petitioner wants court to throw out the pleadings of the Respondent because they did not pay the admitted partial debt. This is too presumptuous of the Petitioner in circumstances where the pleadings concern the substantive petition and not an application for contempt of court. To disregard the Respondent’s pleadings in the circumstances of this case may result in the violation of the constitutional right to be heard for the Respondent and this is uncalled for.

11. The Petition supported by the affidavit of Ms. Nora Muga Mugavana the General Manager of the Petitioner seeks to wind up the Respondent for failure to pay a debt of USD: 76,116.93. It is not disputed that the Petitioner was contracted for shipping services by the Respondent between December 2014 and July 2015. However the Respondent disputes the total amount being claimed by the Petitioner to the tune of USD: 49,082 (United States Dollars Forty Nine Thousand Eighty Two only). The Respondent in paragraph 10 of Mr. Chadi Ezzedine's affidavit dated 15<sup>th</sup> December 2015 contends that the amount claimed is not a liquidated amount as it arose as a result of the delays and lackadaisical conduct of the Petitioner whose laxity caused the demurrage and storage charges to accrue which liability is disputed by the Respondent and the same cannot be visited on it. To this end he attaches annexure A which demonstrates possible unnecessary over stay of its cargo at the port.
12. The fact that the Petitioner and Respondent are not agreeable on the alleged liquidated sum and each side is adducing a different amount may be the reason for the failure to pay the claimed USD: 76,116.93 by the Respondent. This disagreement on the amount due and owing does not necessarily translate into a failure to pay what is due and owing by the Respondent to warrant a petition for its winding up under sections 3(2), of the Insolvency Act, 2011 of Uganda as presented by the Petitioner.
13. Moreover by relying on sections of the Insolvency Act, 2011 of Uganda the Petitioner acted erroneously since clause 13 of the agreement between the parties invokes applicability of Kenyan law in case of a dispute. The Petitioner therefore has not demonstrated that as required by clause 13 this petition is proper under the Kenyan laws.
14. Be that as it may the Respondent concedes in its submissions and on 21<sup>st</sup> March 2016 in court the Respondent counsel Mr. Bosco Okiror admitted that after reconciliation of accounts by the Respondent it owes the Petitioner USD: 27, 302.16 (United States Dollars twenty seven Thousand Three Hundred Two and Sixteen Cents only) for services rendered in the transactions in issue. It is unfair and prejudicial to the Petitioner for the Respondent not to pay this money which it admits it owes to the Petitioner. The prejudice stems from the nature of the Petitioner's business which clearly is cost intensive and the

Petitioner needs the money in issue which it used for the Respondent's contracted services to reinvest in its business. Therefore by order of this court the Respondent must immediately pay the undisputed USD: 27, 302.16 to the Petitioner. For any other money the Petitioner claims is due and owing from the Respondent which is disputed, the Petitioner can take out some other civil action for the same in compliance with the Kenyan law. For its failure to pay this undisputed amount to date the Respondent shall also pay costs of this petition to the Petitioner.

I so order

**Lydia Mugambe**

**Judge**

**7/7/2017**

7<sup>th</sup> July, 2017

Mr. Bosco Okiror for the Respondent and no one for the Petitioner

Ruling delivered.

**Kabagye Bahinguza Joy**

**ASSISTANT REGISTRAR**

**7<sup>th</sup> July, 2017**