

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 912 OF 1996

UNICOF LTD. PLAINTIFF

— versus —

INTERFREIGHT FORWARDERS LTD. DEFENDANT

BEFORE:- HON. THE PRINCIPAL JUDGE - MR. JUSTICE J.E. NTABGOBA

RULING

Unicof Ltd, brought this action under the insurance doctrine of subrogation. It is claiming a sum of US \$ 86,223.91 from M/S. Interfreight Forwarders (U) Ltd. UNICOF claims that it is bringing this action for the benefit of its insurers/underwriters who are represented by their agent MA'S. Henry Voet — Geninot B.V.B.A of Antwerpen, Belgium. The said insurers/underwriters, it is alleged in the plaint, paid the plaintiff (insured) the sum of US \$ 86,223.91 for the loss of 600 bags of Uganda Robust Coffee. In paragraph 3 of the plaint the plaintiff avers, inter alia, that “The plaintiff shall produce and rely on the documents evidencing payment of the said sum of US 86,223.91 at the hearing hereof”. It is also averred that the plaintiff shall further rely on the subrogation Form dated 16th September 1996 and executed by the plaintiff attached to the plaint as Annexure UIJ-1.

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The back ground to the suit is not quite material, as this is a ruling on the preliminary objections raised at the commencement of the hearing by Mr. Shonubi, learned Counsel for the defendant. The objections are:—

(a) The policy of insurance to be relied on for subrogation has not been annexed to the plaint - nor to a list of documents to be relied on at the trial and that the policy of insurance is not referred to at all in the plaint.

(b) There is no certificate of insurance referred to in the plaint either.

For a claim in subrogation to succeed proof of insurance policy as well as of payment by the insurer (the subrogee — plaintiff) to the insured (the subrogator) must be made.

Mr. Shonubi's preliminary objections are based on the provisions of Rules 14 and 15 of order 7 of the Civil Procedure Rules which are that:—

“14(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it

in Court when the plaint is presented, and shall at the sametime deliver the document ox' a copy thereof to be filled with the plaint.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in suport of his claim, he shall enter such documents in a list to be added or annexed 'to the plaint'.

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“15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is”.

Because apparently the documents in question are in the possession and power of Counsel for the plaintiff; but they did not comply in respect therewith under Order 7 rules 14

-,and 15, learned Counsel for the plaintiff's argue.

(i) that by a Notice to admit documents, pursuant to

0.11 rr. 2 & 3 of the Civil Procedure Rules filed in Court on 14th November 1997, Counsel for the defendants were invited to “within forty—eight (48) hours from 5.OOp.m. on 19th November 1997, to admit that such documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been and that such as are specified as copies are true copies of the originals which were respectively written, signed or executed as they purport respectively to have been, saving aU just exceptions to the admissibility of such documents as evidence in this suit.” Accompanying the above notice were the several documents including those which Mr. Shonubi insists should have been dealt with in accordance with Order 7 rules 14 and 15 of the Civil Procedure Rules. It is to be noted that the suit was filed in this Court on or 17th October, 1996, and that the notice under Order 11 rules 2 and 3 was filed 14th November 1997 almost a year from the date of filing of the suit.

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Order 11 rules 2 and 3 provide:—

“(2) Either party may call on the other to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the

costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the

result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed, unless such notice is given, except where the omission to give notice is, in the opinion of the Court, a saving of expense”.

“(3) A notice to admit documents shall be in Form 9 of Appendix B, with such variations as circumstances may require”.

The purpose of order 11 rule (2) is to narrow the issues in the pleadings and this is why rule 6 thereof provides that:— “Any party may at any stage of suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just”.

In my view order 11 provides some sort of interrogatory remedy that would speed up the disposal of the case.

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It is different from order 7 Rules 14 and 15 which, govern the procedure at the inception of the case and ‘warn the opposing party of what documents to expect. Failure to comply with Rules 14 and 15 of the Civil Procedure Rules take the opposing party by surprise. This is why Rule 18 of order 7 provides that:—

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“(1) A document which, ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

Mr. Shonubi is right in his preliminary objection:

Order 11 rules 2 and three should not be confused with order 7 rules 14 and 15. Mr. Kimuli and Mr. Bwanika,

learned counsel for the plaintiffs, have apparently confused’. *thea*. But now they, learned counsel for the plaintiffs have realised their error. They, at the hearing made a frantic oral application to be allowed to annex the documents, subject of Mr. Shonubi’s preliminary

objection, to the plaintiff. Mr. Stonubi has challenged the oral application and again, I think, he is correct. Any application under Order 7

“shall be by summons in chambers -e.€ f’ c77-( 2,eP\_r

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Accordingly, I uphold Mr. Shonubi\*s preliminary objection as well as disallow the oral applications to admit the relevant documents to be annexed to the plaintiff.

What then is the effect of my decision? My considered opinion is that no case would be brought out under the doctrine

of subrogation in the absence of the policy of insurance to be relied on for subrogation, and also in the absence of a certificate of insurance. In the circumstances, I would strike out the plaintiff as being incompetent. I award Costs to the defendant.

PRINCIPAL JUDGE

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