

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA  
(Civil jurisdiction)**

**2014/HP/349**



**BETWEEN:**

**WORLD FREIGHT INTERNATIONAL LIMITED**

**PLAINTIFF**

**AND**

**KING LONG MOTORS ZAMBIA LIMITED**

**DEFENDANT**

**BEFORE THE HONOURABLE MRS. JUSTICE P.C.M. NGULUBE IN  
CHAMBERS**

**FOR THE PLAINTIFF : MR DZEKEDZEKE, MESSRS DZEKEDZEKE & CO**

**FOR THE DEFENDANT : MR K. WISHIMANGA, MESSRS A.M WOOD & CO**

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## **J U D G M E N T**

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**Cases referred to:**

1. *Aloupis v Zambia Tanzania Road Services Ltd* (1972) Z.R. 51
2. *Musingah v Daka* (1974) ZR 37,
3. *K.B. Davies and Company (Zambia) Limited v Musunu Appeal No. 181 of 2006* (unreported)
4. *Wilson Masauso Zulu v Avondale Housing Project* (1982) Z.R. 172 (S.C.)

**Legislation referred to:**

*Customs and Excise (General) Regulations , Statutory Instrument no. 54 of 2000*

By way of Writ of Summons the Plaintiff claims the following reliefs against the Defendant;

1. The sum of K80, 000.00 being the amount owed by the Defendant for the use of the Plaintiff's bonded warehouse without their prior consent authority.
2. Damages for the use of their bonding facility in an unauthorized manner
3. Interest
4. Any other relief that the Courts may deem fit
5. Costs

In the Statement of Claim, the Plaintiff pleaded that it was in the business of providing bonded warehouse facilities. That in June, 2013, while conducting inventory and investigations, the Plaintiff discovered that the Defendant has used their bonding facility for storing goods without their consent or prior permission. As a result of the unauthorized use of bonded warehouse and nonpayment, the Defendant owes the Plaintiff the sum of K80, 000.00.

That despite writing to the Defendant demanding the said amount, the defendant has refused, neglected and continued to ignore the demand. As a result, the Plaintiff has suffered loss and damages.

By Defence filed on 20<sup>th</sup> March, 2014, the Defendant denied the Plaintiff's allegations and averred that it had its own bonded warehouse and at no stage had it ever used the Plaintiff's bonded warehouse. Further that the figure claimed of K80,000. 00 was unjustified and that the Plaintiff were not entitled to claim as they had not suffered any loss and damage.

During trial, the Plaintiff called three witnesses, the first witness was Martin Siwale, the Managing Director in the Plaintiff Company who testified that the Plaintiff company was a clearing and forwarding company with a customs approved bonded warehouse.

The witness explained the operations of the company by stating that when a client imported goods into the Country but was not ready to pay tax, the Company would keep their goods in the bonded ware house without paying taxes for a period of not more than 12 months. That the Company have a deposit of K3, 000, 000.00 with Zambia Revenue Authority and are allowed to keep goods less the deposit.

That in February, 2014, the Plaintiff Company received a Letter of Demand from Zambia Revenue Authority relating to outstanding obligations in respect to their bonded ware house. That this led to a verification exercise of all transactions in the bonded warehouse which revealed that the Defendant Company had used the Plaintiff's bonded warehouse.

That a Letter of Demand was sent to the Defendant to find out why they had used the Plaintiff 's Bonded facility without consent who responded that they



had mistakenly captured the Plaintiff's bonded code number of LKA 1066. That this was confirmed by the customs and excise declaration form produced at Page 5 of the Plaintiff's bundles.

The witness testified that the customs and excise declaration form showed that the Defendant company imported buses into Zambia. That the Defendant company had clients in Malawi and Harare but were supposed to pay the full taxes before exporting. That the Plaintiff Company claimed K80, 000.00 from the Defendant as its non payment of taxes led to Zambia Revenue Authority deducting from the Plaintiffs bonded amount to facilitate the export. Further that the Plaintiff's bonding manager was the one who dealt solely with the bonding of goods in the Plaintiff Company.

In Cross Examination, the witness stated that the only proof that the Defendant had used their bonded facility came from Zambia Revenue Authority and that for the period 1<sup>st</sup> January, 2013 onwards they had applied for renewal of their bonded ware house license as per application dated 3<sup>rd</sup> January, 2014 and produced on page 6 of the Plaintiff's bundle of documents. That there was no license for 2013.

The witness stated that he was not aware that the Defendant had its own bonded ware house and confirmed that the manual entries produced on page 5 of the Defendant's bundles indicated a warehouse code of LKL 969. Further that there was no documentary proof of its claim for K80, 000.00.

The Second Plaintiff witness was Josie Simwanza, the clearing clerk in the Plaintiff Company who testified that he was the bonded warehouse supervisor and his job involved receiving goods as well as releasing goods that had been cleared in the warehouse.

That the Defendant bonded their goods in their warehouse and later exported them as per print out obtained from Zambia Revenue Authority which showed that the Defendant had used the Plaintiff's facility. That he had not handled any of the Defendant's consignment.

In Cross Examination, the witness stated that he kept records of all transactions and that he received all goods. Further that the appendix to the Letter of demand cited dates from 11<sup>th</sup> September, 2013 onwards.

In Re- Examination, the witness stated that he had no information about the Defendant Company.

The Third Plaintiff witness was Vincent Zyambo, an examining officer at Zambia Revenue Authority who testified that he had been working at Zambia Revenue Authority for seven months and his duties involved examining entries for imported goods which are bonded in a warehouse as well as ensure correct classification.

The witness stated that looking at the Customs Excise Declaration form produced in the Plaintiff's bundle of documents, box 49 of the form indicated

that the bonded warehouse used was LKA 1066 which belonged to the Plaintiff Company.

In Cross Examination, the witness stated that he was a holder of a basic customs certificate and that the alleged activities happened in June, 2013 before he joined Zambia Revenue Authority but that he was authorized by Zambia Revenue Authority to testify. When referred to both the Plaintiff's and the Defendant's bundles of documents, the witness confirmed that while the manifest number of 2013 6047 appeared on both documents, the warehouse codes differed in that while one bore LKA 1066 the other bore LKA 969.

The witness further stated that the documents are presented to Zambia Revenue Authority in a handwritten manner and then followed up with a print out. That if there was a mistake on the handwritten document, the mistake would reflect on the print out. Further that he was aware that the Defendant had a bonded warehouse LKA 969.

There was no re-examination of the witness. The Plaintiff closed its case.

The Defendant's first witness was Kennedy Phiri, the shipping manager in the Defendant Company and had been so working for over 6 years. He testified the Defendant Company had a client who bought two buses which were in the Defendant's bonded warehouse in Lusaka, in particular LKA 969, plot number 9477, off Kafue Road Makeni.



That the witness had taken documentation in respect of the two buses to their agent, a Mr Chisha at Zambia Revenue Authority Port. The instructions to the agent were that he was to ex bond the buses and export them to Zimbabwe. That later that afternoon, he was informed that there was a data capture error on the Defendant's papers. That the person who was compiling the data captured material for another bonding ware house whose supervisor had been informed. That later the papers were acquitted by stamping.

The witness testified that the importation papers are accompanied by a bill of lading and a manifest indicating where the goods were coming from to a particular bonded ware house in Lusaka. That when exporting the goods, form CE20 is filled in hand written and then goes for checking and stamping at customs. Thereafter it goes for data capturing. The witness referred to pages 5 and 6 of the Defendant Bundles as the requisite documentation involved in the exportation process. He further stated that apart from the warehouse code, all the information was correctly captured.

That when the Plaintiff Company saw the discrepancy, they wrote a letter of demand claiming K80, 000.00 from the Defendant for use of the warehouse. That despite explaining how the incidence came about, the Plaintiff proceeded to issue a letter of demand through their lawyers.

The witness further testified that the Defendant had its own warehouse and did not make use of the Plaintiffs and that the Plaintiff's matter should be dismissed.

There was no Cross Examination for this witness.

The Second Defendant witness was Lazarus Chisha, clearing agent. He testified that he used to clear the Defendant's goods at the Lusaka port. He explained the procedure of customs declaration by stating that they utilised a manual entry form CE20 and if they were doing a bonding entry, they would use CE19. That form CE20 would have declarations of the importer, exporter and all the goods they were clearing. That form CE20 preceded CE19. That the manual entries would then be captured on the electronic documents which ideally should have the same details as the manual forms.

The witness explained the discrepancy that had occurred in the instant case as being due to human error at the time of capturing the information.

In Cross Examination, the witness testified that he was the one who cleared the consignment on behalf of the Defendant and that the Defendant used the Plaintiff's warehouse code by mistake. That it was rectified with the agent but not at Zambia Revenue Authority and that the Plaintiff was not paid for using their warehouse by mistake.

There was no Re-examination of the witness.

Counsel for the Plaintiff did not file final written submissions.

In written submissions filed on behalf of the Defendant on 10<sup>th</sup> November, 2015, Learned Counsel submitted that the Plaintiff had been unable to prove its case against the Defendant contrary to its duty laid out in **Aloupis v**



**Zambia Tanzania Road Services Ltd (1972) Z.R. 51** in that the Plaintiff was not even sure about its claim amounts and had failed to show that the Defendant used its facilities as the use of the bonded warehouse was a physical act which the Plaintiff failed to show.

That the Plaintiff was barred from making any claims related to the purported use of its bonded warehouse as it did not have a bonded warehouse license for the period January 2013 to December, 2013. That the Plaintiff cannot assert a claim to a right that does not exist.

Further in line with **Musingah v Daka (1974) ZR 37**, the Plaintiff had failed to prove its damage and how it arrived at the amount stated in the statement of claim.

I have carefully considered the pleadings, the evidence furnished by both parties and the final submissions made by the Defendant's Advocates. The substance of this matter appears to be that the Plaintiff Company alleges that the Defendant Company made use of their bonded warehouse without their consent. The evidence shows that by virtue of a mistake in the entry of data at Zambia Revenue Authority Lusaka port, the Plaintiff Company's bonded warehouse code was used in relation to a consignment belonging to the Defendant Company. As a result, the Plaintiff claims to have suffered loss by virtue of the demand letter received from Zambia Revenue Authority.

The Defendant on the other hand admits the error made, but disputes the loss which the Defendant alleges to have suffered. The Defendant Company

furnished evidence that it actually paid duty for the consignment which the Plaintiff Company claims to have paid for.

I find as established the following facts, that the Defendant Company did not make use of the Plaintiff Company's bonded warehouse. Rather there was an error in the entries of data in that the Plaintiff's bonded warehouse code was used instead of that of the Defendant's. This is evident from the declaration forms produced in both the Plaintiff's and the Defendant's bundles of documents which indicate that the consignment was in the name of the Defendant Company but the code used was LKA1066 belonging to the Plaintiff Company. Moreover, the ware house supervisor in the Plaintiff Company admitted that he had not handled the consignment.

That said, the question to be resolved is whether the error occasioned loss to the Plaintiff Company to the benefit of the Defendant Company. The Plaintiff's claim is based on a letter of demand issued by Zambia Revenue Authority which stated in part as follows;

*REF: DEMAND LETTER-CONSUMED*

*The subject refers,*

*Our records indicate that as at 11<sup>th</sup> February, 2014, you have bonded motor vehicles and various goods with total duties and taxes amounting to ZMW 893, 744.18 into World Freight International Bonded Warehouse (LKA1066/LKA1066R). See Appendix I attached for details.*

*A visit to World Freight International Bonded Warehouse on 11<sup>th</sup> February, 2014 to inspect and verify the presence of the goods in question as per list of open declaration printed from the Asycuda<sup>++</sup> system revealed that you have committed the following offence:*



*1. The Motor vehicles and various goods have been consumed in bond without paying the duties and taxes due as they were not present in the warehouse at the time the inspection was done.*

*2. Bonding of goods into a non- licenced bonded warehouse for the period 1<sup>st</sup> January, 2013 to date.*

*We therefore, write to advise that the said taxes are due and must be paid immediately. Furthermore, we advise you to pay penalties of 5% of the total taxes due or 8,000 fee units equivalent to ZMW 1, 440.00 per entry. The total penalties amount to ZMW 155, 429.37 as tabulated in Appendix I attached.*

*We also wish to advise that, should this amount remain unpaid, debt recovery action will be instituted against you in accordance with the provisions of section 170 (A) of the Customs and Excise Act without any further notice.*

*If, according to your records, you have paid the amount owing (or disagree with part or all the stated figures) you are advised to contact the undersigned, immediately.*

The appendix referred to, tabulated a number of entries for the period of June to November, 2013 the basis upon which the Plaintiff was penalized by Zambia Revenue Authority.

I note that the Plaintiff omitted to highlight the particular entries in the appendix which related to the Defendant's consignment and further despite the Plaintiff witness asserting that the error led to the Plaintiff Company taking on the obligation of paying duty on the consignment which amount was deducted from the deposit held with Zambia Revenue Authority, no documentary proof was furnished. Further I observe from the Defendant's bundle of documents that the release orders in respect of the consignment were issued in names other than that of the Plaintiff.



**Regulation 49 of the Customs and Excise (General) Regulations , Statutory Instrument no. 54 of 2000** stipulates the procedure to be followed in reference to bonded goods. It provides as follows;

**(1) Entry of goods for removal from a warehouse for consumption shall be made by the importer or owner of the goods in form CE 20 set out in the Eighth Schedule.**

**(2) When satisfied that the entry is correctly completed, the Customs Divisions shall issue an assessment notice in form CE 3 set out in the Eighth Schedule which shall advise the details of duty payment required to effect the delivery of the goods.**

**(3) The assessment notice shall remain valid for a period of five days from the date of issued and, where the duty is paid in that time the entry will be passed and a release order issued in form CE 4 set out in the Eighth Schedule.**

**(4) Lodgment of the release notice with the owner or operator of the warehouse shall authorize such person to release the goods from the warehouse.**

**(5) If any entry made in terms of this regulation is incorrect, the customs division may, subject to such conditions as the commissioner general may impose, accept an application**

**made in Form CE 120, set out in the Eighth Schedule to amend the entry.**

Going by the dictates of the regulations, had the Plaintiff Company paid duty on the Defendant's consignment, as way of proof, they must have produced an assessment notice indicating how much duty was to be paid and upon payment, a release order. None of these documents were furnished by the Plaintiff. This is coupled with the fact that the Plaintiff failed to show how they arrived at the figure of K80, 000.00.

In **K.B. Davies and Company (Zambia) Limited v Musunu**<sup>4</sup>, the Supreme Court stated as follows;

***"Where there is a lacuna in the evidence, the trite position of the law is that the lacuna should be resolved in favour of the party who is not responsible for that lacuna and in this case, it is the defendant."***

In **Wilson Masauso Zulu v Avondale Housing Project**<sup>5</sup>, the Supreme Court held as follows;

***"where a Plaintiff alleges that he has been wrongfully or unfairly dismissed as indeed any other case where he makes any allegations, it is generally for him to prove those allegations. A Plaintiff who has failed to prove his case***

***cannot be entitled to Judgment, whatever may be said of the  
opponent's case."***

The Plaintiff Company has failed to prove that as a result of their bonded warehouse code being mistakenly entered, they had suffered loss in the form of paying duty on behalf of the Defendant Company. Granted they received a letter of demand from Zambia Revenue Authority leveling certain penalties, however, I am not convinced that this was a consequence of the error nor was it to the benefit of the Defendant Company.

Further, the letter of demand clearly stated that they could query transaction entries which they did not agree with and they could have easily done so. Having found that the Plaintiff's bonded warehouse had not actually been used and the error which made it seem like it had been used, occasioned no loss to the Plaintiff Company, the Plaintiff has no claim against the Defendant.

Based on the foregoing, I dismiss the Plaintiff's claim for lack of merit.

Costs to the Defendant.

**Dated this 3<sup>rd</sup> March, 2016**



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**P.C.M NGULUBE**  
**HIGH COURT JUDGE**