

Tuesday 31<sup>st</sup>  
May 2016

Before the Hon Mr  
Justice A.B. Holloway JA

31

Case called

M. P. Fofanah Esq. for the Plaintiff present.

B. E. T. Cummings Mr. for the 1<sup>st</sup> Defendant present

A. B. G. for the 2<sup>nd</sup> Defendant present.

#### JUDGEMENT

The action herein commenced by the issue of a specially indorsed writ of summons on the 6<sup>th</sup> March 2014 for and on behalf of AUGUSTINE THOMPSON, the Plaintiff herein whose claims against MEDITERRANEAN SHIPPING, COMPANY (SL) LTD., the 1<sup>st</sup> Defendant herein and THE AUCTIONEER, the 2<sup>nd</sup> Defendant herein is for the recovery of a 2002 Nissan Xterra 4x4 vehicle VIN 5N1ED28YX2C560511, a 1987 Nissan Pathfinder 4x4 vehicle VIN JN8HD16Y3HWO14952, a 1995 Mercedes Benz S. 420 Car, VIN WDBGA43E5SA251943 and One Hundred and twenty-five (125) Packages/Boxes of personal effects, AESITN : X20130521034171 worth about One hundred and Thirty-five Thousand United States Dollars (US\$ 135,000/00) from the Defendants jointly and severally; Recovery of demurrage fee of Eleven Million, Six Hundred and Seventeen Thousand Seven Hundred and Sixty Sierra Leone Leones (SL\$ 11,617,760/00) from the Defendants; An injunction restraining the Defendants whether by themselves, their servants, privies, agents and/or employees from proceeding to auction, sell, dispose of, lease, mortgage or in any other way deal or interfere with the said goods listed out in the delivery order as above; Damages for failure to deliver up the said goods to the Plaintiff and for loss of earnings and profit from the 1<sup>st</sup> Defendant; Any further or other order(s) that this Court may deem fit and just and Costs.

The Particulars of the Plaintiff's claim are that the said Plaintiff is a business man who deals in ships, consigns and sells vehicles and general merchandise inter alia; that the 1<sup>st</sup> defendant is a shipping agency whilst the 2<sup>nd</sup> Defendant is the official Auctioneer; that in June, 2013 the Plaintiff paid to the 1<sup>st</sup> Defendant through its agents in Oakland USA, the sum of six Thousand United States Dollars (US\$ 6,000.00) to cover freight and all shipping costs involved in shipping the Plaintiffs goods to the Port of Freetown in Sierra Leone namely a 2002 Nissan Xterra 4x4 vehicle VIN 5N1ED28YX2C560511, a 1987 Nissan Pathfinder 4x4 vehicle VIN JN8HD16Y3HWO14952, a 1995 Mercedes Benz S. 420 Car, VIN WDBGA43E5SA251943 and One Hundred and twenty-five (125) Packages/Boxes of



32

personal effects, AESITN : X20130521034171 worth about One hundred and Thirty-five Thousand United States Dollars (US\$ 135,000/00); that the goods aforesaid were subsequently delivered to the 1<sup>st</sup> Defendant for shipment in the U.S. whereupon the 1<sup>st</sup> Defendant informed the Plaintiff that it will notify the Plaintiff in time as soon as the goods arrive in the Freetown Port for its immediate clearance by the Plaintiff at the Queen Elizabeth II Quay; that even though the expected date of arrival of the goods in Freetown from the US was on 13<sup>th</sup> September, 2013, the Defendant failed to notify the Plaintiff of the arrival of the goods until sometime in February, 2014; that towards mid – February, 2014 the 1<sup>st</sup> Defendant orally informed the Plaintiff that it had received a Release from the Queen Elizabeth II quay authorising the Plaintiff to clear his goods from the Port; that the 1<sup>st</sup> Defendant immediately demanded that the Plaintiff pays demurrage on his goods at the 1<sup>st</sup> Defendants' office in Freetown even though the Plaintiff was never promptly informed by the 1<sup>st</sup> defendant about the arrival of the goods aforesaid; that the Plaintiff paid to the 1<sup>st</sup> Defendant, the demurrage fees charged of Eleven million Six Hundred and Seventeen Thousand, Seven Hundred and Sixty Sierra Leone Leones (SLL 11,617,760/00) to enable him clear this goods from the Port without further delay; that when the Plaintiff arrived at the Port to clear his goods aforesaid, he observed that the container in which his goods were stored had been forced open and its contents interfered with; that upon enquires made from officials at the Port, the Plaintiff was informed that the 2<sup>nd</sup> defendant was on the verge of conducting an auction sale of the goods anytime soon; that notwithstanding several demands made by the Plaintiff to the Defendants for the delivery to him of his goods aforesaid, the said Defendants have failed, refused and or neglected to do so and unless restrained by the Court, the goods could be auctioned; that by reason of the conduct of the Defendants aforesaid, especially the 1<sup>st</sup> Defendant herein the Plaintiff has been deprived of access to his goods, financial loss and damages.

The said Writ of Summons with its accompanying statement and particulars of claim were served on the Defendants herein. The 1<sup>st</sup> Defendant had an appearance entered for and on its behalf on the 20<sup>th</sup> March, 2014 but failed to have delivered and filed a defence to the Plaintiff's claim aforesaid within the time limited for the filing of their defence. By order of this Court dated the 3<sup>rd</sup> day of July, 2014 the Judgment dated 8<sup>th</sup> May, 2014 obtained in default of the 1<sup>st</sup> Defendant delivering and filing a defence to the Plaintiff's claim aforesaid was set aside and that the said 1<sup>st</sup> Defendant was granted leave to deliver and file a defence to the said claim of the Plaintiff out of time. That 1<sup>st</sup> Defendant had its defence delivered and filed on the 17<sup>th</sup> July, 2014. The particulars of the 1<sup>st</sup> Defendants defence are that they cannot admit and or deny that the Plaintiff is a business man who deals in ships, consigns and sells vehicles and general merchandise inter alia and put the said Plaintiff to strict proof thereof; that



they admit that they are a shipping agency duly registered to Sierra Leone; that they deny that the Plaintiff paid to them through its agents in Oakland, USA the sum of US\$6,000,000 to cover freight and all shipping costs involved in shipping the Plaintiff goods aforesaid to the Port of Freetown in Sierra Leone and aver that the Plaintiff only made partial payments for the shipments of the goods and that there was an outstanding balance remaining to be paid to the shipper; that even though the expected date of arrival of the Plaintiff's goods aforesaid in Freetown was on the 13<sup>th</sup> September, 2013, the 1<sup>st</sup> Defendant denies that they failed to notify the Plaintiff of the arrival of the goods until sometime in February, 2014 and aver that the Plaintiff was notified of the arrival of his goods on the 13<sup>th</sup> September, 2013 for which he acknowledged receipt of the said notification by signing for the same; that the 1<sup>st</sup> Defendant avers further that because of the Plaintiff's failure, refusal and neglect to pay for the consignment of the goods, they withheld the 'Telex Release' which would have enabled the Plaintiff to clear the goods upon receipt of notification of arrival of the said goods; that the 1<sup>st</sup> Defendant denies that towards mid February, 2014, they orally informed the Plaintiff that it had received a 'Release' from the Queen Elizabeth II Quay authorising the Plaintiff to clear his goods from the Port and denies further that they immediately demanded that the Plaintiff pay demurrage on his goods at the defendants' office in Freetown even though the Plaintiff was never promptly informed by them about the arrival of the Plaintiff's goods aforesaid and aver that they tried on several occasions to contact the Plaintiff and urge him to pay the shipper in order to get the 'Telex Release' so as to enable him to clear the goods and avoid demurrage charges but all attempts made by them proved futile; that in answer to the Plaintiff's claim that he paid to the 1<sup>st</sup> Defendant at its office, the demurrage fee demanded of Le11,617,760/00 to enable him clear his goods from the Port without further delay, the 1<sup>st</sup> Defendant avers that the Plaintiff had failed to clear his goods in a timely manner leading to demurrage charges of US\$4528.00 plus 15% GST on his goods and that it was they the 1<sup>st</sup> Defendant who negotiated on the Plaintiff's behalf for a 50% discount on the demurrage charges; that the 1<sup>st</sup> Defendant denies that when the Plaintiff arrived at the Port to clear the goods he observed that the container in which his goods were stored had been forced open and its contents interfered with, denies that upon further enquiries from officials at the Port, the Plaintiff was informed that the 2<sup>nd</sup> Defendant was on the verge of conducting an auction sale of the goods anytime soon, denies that notwithstanding several demands made by the Plaintiff for delivery to him of his goods aforesaid, they the 1<sup>st</sup> Defendants have failed, refused and or neglected to do so and denies that by reason of their conduct especially as claimed by the Plaintiff, he, the Plaintiff has been deprived of access to his goods aforesaid, financial loss and damage; that save as hereinbefore specifically admitted, the 1<sup>st</sup> Defendant denied each and every allegation contained in the



Plaintiff's particulars of claim above as though the same were set forth and traversed seriatim.

34

The 2<sup>nd</sup> Defendant had an appearance entered for and on her behalf on the 26<sup>th</sup> March, 2014 and also had delivered and filed on her behalf a defence to the Plaintiff's claim on the 8<sup>th</sup> April, 2014. The particulars of the 2<sup>nd</sup> Defendant's defence are that she does not admit or deny that the Plaintiff is a Businessman who deals in ships, consigns and sells vehicles and general merchandize inter alia; that she admits that she is the official Auctioneer; that the 2<sup>nd</sup> Defendant does not admit or deny that when the Plaintiff arrived at the Port to clear his good, he observed that the container in which his goods were stored had been forced open and its contents interfered with, does not admit or deny that upon further enquiries from officials of the Port, the Plaintiff was informed that the 2<sup>nd</sup> Defendant was on the verge of conducting an auction sale of the goods any time soon, does not admit or deny that notwithstanding several demands made by the Plaintiff for the delivery to him of his goods aforesaid, herself the 2<sup>nd</sup> Defendant has failed refused and or neglected to do so; that save as herein before specifically admitted or denied, the 2<sup>nd</sup> Defendant denies each and every allegation contained in the Plaintiff particulars of claim above as if the same had been expressly denied and traversed seriatim.

By an Order of this Court dated 3<sup>rd</sup> July, 2014 an injunction restraining the 2<sup>nd</sup> Defendant herein to auction, sell, dispose of, lease mortgage or any other way deal in or interfere with the goods listed above in the statement and particulars of claim aforesaid pending the hearing and determination of the action herein was granted. By the same order dated 3<sup>rd</sup> July, 2014 Directions as to the preparation of the trial of the action herein were given by the Judge, the same which the parties herein failed to comply with within the time limited by the said order for them to so comply. By a subsequent order of this Court dated 4<sup>th</sup> May, 2015 the parties were ordered to comply with the said order dated 3<sup>rd</sup> July, 2014 within thirty (30) days. The parties eventually complied with the directions ordered as to the preparation of the trial of the action herein and Court bundles were lodged by the parties herein containing in particular, signed statements of the witnesses who would have to testify at the trial of the action herein and several document which are central to either party's case and which either party intended to rely on, tender and use at the trial of the action herein. Trial of the action herein commenced on the 1<sup>st</sup> July, 2015. At the said trial, AUGUSTINE THOMPSON, the Plaintiff herein testified for and his own behalf as PW1; TENNYSON BLANGO testified for and on behalf of the 1<sup>st</sup> Defendant as DW1 and ISATU DEEN, the 2<sup>nd</sup> Defendant herein testified for and on her own behalf as DW2.



35

Having carefully, read and considered the pleadings delivered and filed herein and the evidence adduced in the action herein this court holds the view that the issue that the plaintiff sometime in June, 2013 shipped a 2002 Nissan Xterra 4 x 4 vehicle VIN 5N1ED28YX2C560511, a 1987 Nissan Pathfinder 4x4 vehicle VIN JN8HD16Y3HWO14952, a 1995 Mercedes Benz S. 420 Car, VIN WDBG43E5SA251943 and One Hundred and twenty-five (125) Packages/Boxes of personal effects, AESITN : X20130521034171 through the 1<sup>st</sup> Defendants agents in Oakland, USA for delivery to the Plaintiff in Freetown, Sierra Leone is not disputed. It is further not disputed that the said goods arrived at the Port of Freetown on or about the 13<sup>th</sup> September, 2013. It is also not disputed that it was on the 12<sup>th</sup> February, 2014 that the plaintiff was notified of a telex release dated 7<sup>th</sup> February, 2014 and instructions given for the release of the goods mentioned above to him after payment by him of the sum of Le3,733,400 and the sum of SLL11,617,760 for shipping services and demurrage respectively as the 1<sup>st</sup> Defendant claims, the said payments made so as to enable the Plaintiff take delivery of his said goods above.

This Court holds the view further that from the evidence adduced in the action herein, it is not disputed that the Plaintiff's goods aforesaid were put up for auction by Government of Sierra Leone though the official auctioneer, the 2<sup>nd</sup> Defendant herein and that some of the said goods had been sold already even before the grant of the injunction restraining the said 2<sup>nd</sup> Defendant from selling the said goods by order of this Court dated 3<sup>rd</sup> July, 2014. The 2<sup>nd</sup> Defendant's contention in this regard is that since the Plaintiff goods aforesaid were discharged in their ports on the 14<sup>th</sup> of September, 2013, delivery of the said goods were not taken by the Plaintiffs and that since the said Plaintiff had failed to pay duties and taxes on the said goods within the sixty (60) days period granted him to do so, the said goods were declared abandoned and seized by the Government of Sierra Leone who in the circumstances had to put it up for auction and sold. The plaintiff's contention is that the 1<sup>st</sup> Defendant did not promptly notify him of the arrival of this goods aforesaid and only released same on the 12<sup>th</sup> February, 2014, five months after its arrival and discharge in the Ports of Freetown, from Oakland, USA. The 1<sup>st</sup> Defendant's contention is that they promptly notified the Plaintiff of the arrival of his goods but could not release the said goods to the Plaintiff since the Plaintiff had not fully paid the costs of freight with the shippers or their agents in the U.S.A and only released the said goods to the Plaintiff on the 12<sup>th</sup> February, 2014 after it had instructions from their agents in the U.S.A. that the outstanding freight had been settled. It follows from the above that two separate and distinct issues which are the paramount issues in dispute as between the plaintiff and the 1<sup>st</sup> Defendant, need to be first determined, they being the issue regarding whether or not the Plaintiff was promptly notified of the arrival of his goods aforesaid in Freetown by the 1<sup>st</sup> Defendant and the



36  
issue regarding whether or not the Plaintiff made full payment of freight costs to the 1<sup>st</sup> Defendant and or their agents in the USA or the shipper before the arrival of his said goods in Freetown. This court holds the view that these issues aforesaid as stated above are separate and distinct. In other words, the 1<sup>st</sup> Defendant's obligation to promptly notify the Plaintiff of the arrival of his goods aforesaid in Freetown should not be dependent on whether or not the Plaintiff paid the full cost of freights to the 1<sup>st</sup> Defendant and or their agents in USA or the Shipper before the arrival of his said goods in Freetown.

A primary reason why this Court holds the view that it is the 1<sup>st</sup> Defendants obligations to promptly notify the Plaintiff of the arrival of his goods in the Ports of Freetown, is so that the Plaintiff is put on his guard to take steps ensuring that if there are any outstanding issue(s) which he would need to do, for instance pay the cost of freight, which the 1<sup>st</sup> Defendant claims was not paid in full before the goods aforesaid were shipped by the 1<sup>st</sup> Defendant's agents in Oakland, USA, are done by the Plaintiff so that his goods are promptly released to him and for him to take delivery of his goods so that charges inclusive of demurrage do not arise. It stands to reason that if the Plaintiff is not promptly notified of the arrival of his goods he would hardly be able to know and determine when if at all, the application of charges, inclusive of demurrage charges for his failure to take deliverance of his goods in the Ports of Freetown would commence. It follows therefore that it should first be determined whether or not the Plaintiff was promptly notified of the arrival of his goods in the Ports of Freetown, from Oakland USA. PW1 AUGUSTINE THOMPSON, the Plaintiff herein testified that he left the U.S.A. for Sierra Leone after shipping his goods with the 1<sup>st</sup> Defendant's agents in the U.S.A. and on his arrival in Freetown Sierra Leone on the 19<sup>th</sup> July, 2013 he visited the offices of the 1<sup>st</sup> Defendant to enquire about his goods aforesaid. He testified that the 1<sup>st</sup> Defendant promised to notify him promptly of the arrival of his goods in Freetown. He testified that he again visited the offices of 1<sup>st</sup> Defendant on the 13<sup>th</sup> September, 2013 and several other times thereafter to make follow up enquires about the arrival of his goods in Freetown. He testified that even though the expected date of the arrival of his goods in Freetown was on the 13<sup>th</sup> September, 2013, the 1<sup>st</sup> Defendant only notified him of the arrival of his goods sometime in February, 2014. DW1 TENNYSON BLANGO, a representative of the 1<sup>st</sup> Defendant herein testified that on the contrary the plaintiff was promptly notified of the arrival of his goods in the Ports of Freetown on the 13<sup>th</sup> September, 2013 and tendered in evidence Exhibit B 35 which is a notice of arrival of the Plaintiffs goods aforesaid issued by OBT SHIPPING Ltd. as agents for the 1<sup>st</sup> Defendant on the 12<sup>th</sup> September, 2013 and addressed to the Plaintiff whose telephone number as stated on the face of Exhibit B 35 aforesaid is +232-77-241076. DW1 Testified that Exhibit B 35 was dispatched to the Plaintiff on



37  
the same date it was issued and that the Plaintiff acknowledged receipt of it by signing it on its face and stating on it his telephone number as 077-294057. PW1 AUGUSTINE THOMPSON, the Plaintiff herein under cross examination by Counsel for the 1<sup>st</sup> Defendant denied ever receiving Exhibit B 35, denied that the signature and telephone number on its face are his and put on it by him. He testified that the only time he knew of and was notified of the arrival of his goods in the Ports of Freetown was on his receipt of Exhibit A 16 on the 12<sup>th</sup> February 2014. Exhibit A 16 is a delivery order of the Plaintiffs goods issued by the 1<sup>st</sup> Defendant on the 13<sup>th</sup> September, 2013 and addressed to the Plaintiff whose telephone number as stated on the face of Exhibit A 16 aforesaid is +232 77 241076.

Exhibit B 35 aforesaid was tendered in evidence by the 1<sup>st</sup> Defendant whose representative, DW1 asserted that the signature on its face was put on it by the Plaintiff himself acknowledging receipt of the same and stating on it his telephone number as 077 294057. As submitted by A. SHOWERS ESQ. of Counsel for the 1<sup>st</sup> Defendant, it is trite law that he who asserts must prove. In this regard this Court holds the view that it is not for the Plaintiff to prove that the signature on the face of Exhibit B 35 was not his. This Court holds the view further that the 1<sup>st</sup> Defendant were sufficiently notified that they would be required to prove that the signature on Exhibit B 35 aforesaid and the handwriting on it was the Plaintiff's when he denied ever having seen Exhibit B 35, let alone append his signature and a phone number on it. This Court holds the view also that in this regard the 1<sup>st</sup> Defendant should have, in a bid to prove its assertion aforesaid, bring forward evidence of a witness who would positively claim that he personally witnessed the Plaintiff receiving Exhibit B 35 aforesaid, appending his signature on it acknowledging receipt of the same and stating on it his telephone number as 077294057. This Court holds the view that this witness cannot be DW1, the said TENNYSON BLANGO since the evidence is that Exhibit B 35 was issued by OBT SHIPPING LTD as agents for the 1<sup>st</sup> Defendant. This Court holds the view further that even though DW1 said in evidence that Exhibit B 35 was dispatched on the same day it was issued on the 12<sup>th</sup> September it is not in evidence that it was himself or another representative of the 1<sup>st</sup> Defendant who served or handed over the same to the Plaintiff. This Courts holds the view also that it cannot be envisaged that OBT SHIPPING LTD having issued Exhibit B 35 would hand it over to the 1<sup>st</sup> Defendant to have it dispatched and that since this cannot be envisaged, the witness which this Court would have expected to be brought forward should have been OBT SHIPPING LTD itself or its representative, who could have brought in and tendered the original of Exhibit B 35 containing the Plaintiff's handwritings above instead of its copy and positively claim that he witnessed the Plaintiff appending his signature on it and stating on it his telephone number as 077294057. This Court holds the view that the fact that the 1<sup>st</sup> Defendant failed to



bring forward OBT SHIPPING LTD or its representative as a witness to prove its assertion that the signature on the face of Exhibit B 35 was put on it by the Plaintiff acknowledging receipt of the same and stating on it his telephone number as 077294057 cast doubts as to whether in fact a notice of arrival of the Plaintiffs goods were sent to him at all on the 13<sup>th</sup> September, 2013 as claimed by the 1<sup>st</sup> Defendant.

38

A. SHOWERS ESQ of Counsel for the 1<sup>st</sup> Defendant submitted that the signature on the face of Exhibit B 35 is the signature of the Plaintiff and invited this Court to compare the said signature on the face of Exhibit B 35, with the one found on the Plaintiff's witness statement which had been adopted by this Court as part of the evidence herein. This Court holds the view once again that it was the 1<sup>st</sup> Defendant who asserted that the signature on the face of Exhibit B 35 is the signature of the Plaintiff and it is for them to prove it. This Court holds the view further that by inviting this Court to compare signatures, the 1<sup>st</sup> Defendant seems to be attempting to shift its burden of proving its assertion aforesaid and leaving it with this Court to make a determination on whether or not the signature on Exhibit B 35 are the Plaintiffs' by making comparisons of it on documents presented to it rather than by evidence presented to it. It is obvious that this Court cannot make such a determination by making comparison of the said signatures by documents presented to it. It can only make such a determination by the evidence of an expert witness in handwriting, which is what the 1<sup>st</sup> Defendant would have been expected by this Court to do in the circumstance. This Court holds the view that it is only by the evidence of such an witness that a determination of whether or not the signature on Exhibit B 35 is that of the Plaintiff can be reached. Counsel for the 1<sup>st</sup> Defendant's submission therefore that it is for the Plaintiff to apply to the Court to make certain orders is untenable. This Court holds the view also that it is immaterial whether or not the telephone number stated on Exhibit B 35 is the Plaintiffs'. What is material is whether or not it was stated thereon and put on Exhibit B 35 by the Plaintiff himself. Again as stated above, this determination can only be done by this Court after consideration of the evidence of an expert in handwriting, such evidence which is the 1<sup>st</sup> Defendant's duty to produce and which they failed to do. Counsel for the 1<sup>st</sup> Defendant's submission however, that the issue of whether or not the telephone number stated on Exhibit B 35 is the Plaintiffs' is a trivial one since there is evidence before this Court that the Plaintiff has several telephone numbers is untenable because, this Court finds no evidence that the Plaintiff has several telephone numbers. This Court finds further that the only telephone number found on the relevant documents tendered herein, these being Exhibit B 35 which is notice of arrival, Exhibit A 16 which is a delivery order and Exhibit B 28 which is an instruction for the release of cargo as the Plaintiffs, is +232 77 241076. This Court finds also that from the evidence, this was the telephone number which the 1<sup>st</sup> Defendants used to



39  
call the Plaintiff and notify him of the 1<sup>st</sup> Defendants receipt of Exhibit B 28 and not the telephone number 077 294057 which the 1<sup>st</sup> Defendant claims, was put on Exhibit B 35 by the Plaintiff as his telephone number. It should be pointed out that Exhibit B 28 was received by the 1<sup>st</sup> Defendants on the 7<sup>th</sup> February, 2014, long after, as they claim, the Plaintiff had stated on Exhibit B 35 his telephone number to be 077294057. This notwithstanding, this Court finds no evidence that the 1<sup>st</sup> Defendant called 077 294057 which they claim was stated on Exhibit B 35 by the Plaintiff himself, before calling +23277 241 076 which was stated on Exhibit B 35, Exhibit A 16 and Exhibit B 28 as the Plaintiffs telephone number. This Court holds the view therefore that the only reasonable conclusion it could arrive at as to the reasons why the 1<sup>st</sup> Defendants did not call 077294057 at all was because they know it was either a nonexistent number or that it was not the plaintiffs number and was not put on Exhibit B 35 by the Plaintiff himself.

From the above this Court finds no evidence adduced by the 1<sup>st</sup> Defendant that the Plaintiff acknowledged receipt of Exhibit B 35 by signing it on its face and stating on it his telephone number as 077-294057 and in this regard conclusively holds the view that the 1<sup>st</sup> Defendant breached its obligation it owed the Plaintiff to promptly notify him of the arrival of his goods aforesaid in the Ports of Freetown from Oakland U.S.A. This Court had earlier given above; the reason(s) for its decision why it held the view that it was the 1<sup>st</sup> Defendants obligation to promptly notify the plaintiff of the arrival of his goods in the Ports of Freetown. This Court's holding above that the 1<sup>st</sup> Defendant breached its obligation aforesaid could have well determined this matter at this stage but since it is of the view that it would be premature for it to do so at this stage, it needs to make mention and consider the submissions made by A. SHOWERS ESQ. of Counsel for the 1<sup>st</sup> Defendant that, having been told by the 1<sup>st</sup> Defendants agents in the USA that the Plaintiffs goods would be arriving in the Ports of Freetown on or about the 13<sup>th</sup> September, 2013, it is the Plaintiff's sole responsibility and his obligation to ensure that he checks and track the movement of his goods and ensure that they are cleared within the shortest period. Counsel for the 1<sup>st</sup> Defendant submitted further that service on the plaintiff of Exhibit B 35 which is a notice of arrival was done outside of the established norm in shipping transactions and that such a gesture was done out of an abundance of caution and not as an entitlement to the Plaintiff. Considering this Courts holding above on the issue regarding the 1<sup>st</sup> Defendant's obligations to promptly notify the Plaintiff of the arrival of his goods in the Ports of Freetown, it can only assume that the submissions above of A SHOWERS ESQ. of Counsel for the 1<sup>st</sup> Defendant are tenable. This notwithstanding, the fact that it is not disputed that sometime in June, 2013 the plaintiff shipped goods as outlined above through the 1<sup>st</sup> Defendant's agent in Oakland USA for delivery to the plaintiff in Freetown and that the said goods



40  
arrived at the Ports of Freetown on or about the 13<sup>th</sup> September, 2013, this Court holds the view that it is the 1<sup>st</sup> Defendants unarguable obligations to take the necessary steps and promptly release the said goods to the Plaintiff for him to take delivery of them. The reason(s) why this Court holds this view is that so that the Plaintiff takes prompt delivery of his goods so that unnecessary charges inclusive of demurrage do not arise. It stands to reason that if the Plaintiffs goods are not promptly released to him by the 1<sup>st</sup> Defendants and for him to take delivery of the said goods, charges inclusive of demurrage would arise and which the Plaintiff would have to settle before he takes delivery of his goods.

As stated above it is not disputed that it was on the 12<sup>th</sup> February, 2014 that the Plaintiff was notified of a telex release dated 7<sup>th</sup> February, 2014 and instructions given for release of his goods aforesaid, five months after its arrival and discharge in the Ports of Freetown from Oakland, United States of America. The 1<sup>st</sup> Defendants contention as to the reason(s) why it did not promptly release the said goods to the Plaintiff is that the Plaintiff had not fully paid the costs of freight with the 1<sup>st</sup> Defendants agent in the U.S.A. or the Shipper and only released the said goods to the Plaintiff on the 12<sup>th</sup> February, 2014 after it had instructions from their agents in the U.S.A. on the 7<sup>th</sup> February, 2014 that the outstanding freight had been settled. The Plaintiff on the other hand testified that he was charged and paid the sum of US\$ 6000.00 to the 1<sup>st</sup> Defendants agents in Oakland USA to cover freight and shipping cost before his goods aforesaid were shipped from Oakland USA to the Ports of Freetown. The Plaintiff testified under cross examination by A SHOWERS ESQ. of counsel for the 1<sup>st</sup> Defendant that he was not issued with a receipt for payment of the said sum and has never received a bill of lading in respect of the shipping transaction aforesaid. He testified that this notwithstanding he would have been able to clear the goods from the Ports of Freetown without a bill of lading. In support of their contention above, the 1<sup>st</sup> Defendant tendered in evidence Exhibit B 21-22, Exhibit B 26-27, Exhibit B 28 and Exhibit B 34. Exhibit B 21-22 is an email correspondence between R. Fredrica a representative of the 1<sup>st</sup> Defendant and C. Boyer a representative of the 1<sup>st</sup> Defendant's agent in the United States of America, the same revealing that on the 7<sup>th</sup> February 2014 at 20:35 hours C. Boyer wrote to R. Fredrica stating that attached is a copy of the telex release for the bill of lading numbered MSCUWF984337 and kindly asking that the 1<sup>st</sup> Defendant's agent in the United States of America know if any further action is necessary and that if no response is received within 24 hours, MSC USA, the 1<sup>st</sup> Defendant's agents in the United States of America will assume all is in good order. Exhibit B 21-22 also reveals that in response and on the 8<sup>th</sup> February 2014 at 14:38 hours, R. Fredrica wrote to C. Boyer confirming receipt of the telex release above.



41

Clearly Exhibit B 21-22 does not in any way reveal the reason(s) why the 1<sup>st</sup> Defendant did not as they were obligated to do, promptly release the Plaintiff's goods aforesaid to him in confirmation of their claims that they could not promptly release the said goods to him because of his failure to pay the outstanding balance of freight charges. Exhibit B 21-22 only confirms that instructions for the release of the Plaintiff's goods to him were given on the 7<sup>th</sup> February 2014. Exhibit B 26-27 is also another email correspondence between Jakob E. Nygaard a representative of the 1<sup>st</sup> Defendant and C. Boyer, a representative of the 1<sup>st</sup> Defendant's agent in the United States of America, the same revealing that on Thursday 13<sup>th</sup> March 2014 at 7:08 hours, Jakob E. Nygaard wrote to C. Boyer seeking C. Boyer's assistance to bring some light on the issue of the Plaintiff's claim that the 1<sup>st</sup> Defendant delayed the release of his goods for which he is taking them to court. Exhibit B 26-27 also reveals that on the 13<sup>th</sup> March 2014 at 13:04 hours, in response, C. Boyer wrote to Jakob E. Nygaard stating that it was the shipper who requested the telex release on the 7<sup>th</sup> February 2014 and that on the same day the release was requested, he issued telex release sent on the 7<sup>th</sup> February 2014. Exhibit B 26-27 does not reveal why the shipper requested the telex release only on the 7<sup>th</sup> February 2014, five (5) months after the Plaintiff's goods arrived in the Ports of Freetown from the Ports of Oakland U.S.A and certainly does not confirm the 1<sup>st</sup> Defendant claims that they could not promptly release the said goods to the Plaintiff because of his failure to pay the outstanding balance of freight charges. In fact, this court finds from exhibit B 26-27 that the 1<sup>st</sup> Defendant did not know and could not have offered an explanation as to the reason(s) why instructions for the release of the Plaintiff's goods were only given by telex release on the 7<sup>th</sup> February 2016. This court holds the view that if the 1<sup>st</sup> Defendants were absolutely certain that the Plaintiff's goods were only released to him on the 12<sup>th</sup> February 2014 because of the Plaintiff's failure to pay an outstanding balance of freight charges, then Jakob E. Nygaard, a representative of the 1<sup>st</sup> Defendant would not have sought C. Boyer's, a representative of the 1<sup>st</sup> Defendant's agent in the United States of America assistance to bring some light on the issue of the Plaintiff's claim that 1<sup>st</sup> Defendant delayed the release of his goods to him for which he is taking them to court.

From the above this court holds the view that the 1<sup>st</sup> Defendant has not in any way proved that and finds no evidence of their contention that release of the Plaintiff's goods aforesaid to him were delayed because he had not fully paid the costs of freight with the 1<sup>st</sup> Defendant's agents in the United States of America. Exhibits B 21 - 22 aforesaid and Exhibits B 26-27 aforesaid does not as stated earlier support the 1<sup>st</sup> Defendant's contention above in this regard. On the contrary and from a closer look of Exhibit B 28 and Exhibit B 34, the same which were tendered in evidence by the 1<sup>st</sup> Defendant in support of their contention above, this Court finds that the Plaintiff's



42

testimony that he was charged and he paid the sum of US\$6,000.00 to the 1<sup>st</sup> Defendant's agents in Oakland, U.S.A to cover freight and all shipping costs before his goods aforesaid were shipped from Oakland, United States of America to the Ports of Freetown and his testimony under cross examination by Counsel for the 1<sup>st</sup> Defendant that he was not issued with a receipt for payment of the said sum and has never received a bill of lading in respect of the shipping transaction aforesaid but that this notwithstanding he would have been able to clear the goods from the Ports of Freetown without a bill of lading is more probably true than not. Exhibit B 34 is the bill of lading numbered MSCUWF984337 in respect of the Plaintiff's goods above and which contains in it an endorsement that the consignee must pay a deposit if container should move with goods for final destination and that the freight cost for a 40 feet container is Four Thousand Five Hundred and Seventy four Euros (€4,574.00) which is about Six Thousand United States Dollars (US\$6,000.00) even if you consider the present exchange rate at ~~one dollar to four dollars~~ <sup>one dollar to four dollars</sup> It is obvious then that the Plaintiff must have paid some amount of money towards the freight cost of US\$ 6,000.00 (Six Thousand United States Dollars) which he say he was charged with before his goods left Oakland U.S.A for Freetown. This court holds the view that even though Exhibit B 34 aforesaid is not explicit as to whether or not the Plaintiff paid the full amount of freight costs charged, Exhibit B 28 which is the instruction for the release of the Plaintiff's goods aforesaid to him dated 7<sup>th</sup> February 2014 states clearly that "there are no collect freight charges and that all prepaid freight charges have been collected". This court holds the view further that situations are envisaged when a consignee might have paid only part of the freight costs but his goods shipped on the understanding that payment of the balance freight costs is done where the goods are discharged. This is particularly so when the consignee's residence is outside of the jurisdiction where the goods were originally shipped like in this case where the Plaintiff's address on Exhibit B 28 is given as 26 Pratt Lane, Freetown, Sierra Leone. This Court finds no evidence that this was the situation in this case and holds the view that if there was a balance freight cost to be paid by the Plaintiff, the 1<sup>st</sup> Defendant must have shown the amount of deposit paid by the Plaintiff, the balance due and instructions from the 1<sup>st</sup> Defendant's agents to collect same from the Plaintiff before the goods are released. There being no evidence shown in this regard and the fact that Exhibit B 28 clearly states that 'there are not collect freight charges and that all prepaid freight charges have been collected', it follows that and this Court holds the view that the Plaintiff paid all freight charges in Oakland, United States of America before his goods were shipped and had no balance freight costs to pay in respect of the shipment of his goods aforesaid. This court holds the view further that the statements in Exhibit B 28 that 'full set of original bill of lading together with written instructions (from shipper or party entitled to the cargo) are kept in our files. Therefore kindly release subject shipment against proof of identity, but without



43  
presentation of an original bill of lading to the Plaintiff confirms the Plaintiff's contention that he has never received a bill of lading in respect of the shipping transaction herein but that this notwithstanding he would have been able to clear his goods from the Ports of Freetown.

From the above, this court conclusively holds the view that the 1<sup>st</sup> Defendant breached his unarguable obligation to take the necessary steps and promptly release the Plaintiff's goods aforesaid which he had shipped from Oakland, U.S.A, when the said goods arrived in the Ports of Freetown on or about the 13<sup>th</sup> September 2013, for the Plaintiff to take delivery of them, and only had the same released to the Plaintiff on the 12<sup>th</sup> February 2014, some five (5) months after the said goods arrived in the Ports of Freetown. Contrary to its contention that it did not promptly release the Plaintiff's goods aforesaid to him on its arrival because the Plaintiff had not fully paid the costs of freight with the 1<sup>st</sup> Defendant's agents in the U.S.A, this court finds no evidence of any reasonable explanation as to why the 1<sup>st</sup> Defendant breached its unarguable obligation aforesaid. Having said this, this court seems to be at a loss as to the reason(s) why the 1<sup>st</sup> Defendant had to demand that the Plaintiff pay the sums of Three Million, Seven Hundred and Thirty Three Thousand, Four Hundred Sierra Leone Leones (Le3,733,400/00) and particularly the sum of Eleven Million, Six Hundred and Seventeen Thousand, Seven Hundred and Sixty Thousand Sierra Leone Leones (Le11,617,760.00) for the delivery order of the Plaintiff's goods which said delivery order was tendered in evidence by the 1<sup>st</sup> Defendant and marked Exhibit B 30 and for 'demurrage' respectively, before the Plaintiff's goods aforesaid were released to him on the 12<sup>th</sup> February 2014 notwithstanding the instructions given for the release of the said goods to the Plaintiff on the 7<sup>th</sup> February 2014, the same which is Exhibit B 28 aforesaid. In accordance with Exhibit B 28 the 1<sup>st</sup> Defendant was instructed to release the Plaintiff's goods aforesaid against payment of any local charge if applicable. This court holds the view that it was against this backdrop that the 1<sup>st</sup> Defendant might want this court to believe that it demanded the aforesaid payments from the Plaintiff. The evidence herein reveals that the said payments were made by the Plaintiff who tendered in evidence receipts issued to him by the 1<sup>st</sup> Defendant and marked Exhibits A 19 being the receipt for payment of Exhibit B 30, the delivery order aforesaid and Exhibit A 17 being the receipt for payment of 'demurrage', the said Exhibits A 19 and A 17 dated 12<sup>th</sup> February 2014 respectively.

This court finds from the evidence that the Plaintiff raised no objections as to the payment of the sum of SLL 3,733,400.00 for the delivery order and that in this regard, this court holds the view that the said charge for and its payment was appropriate and applicable in the circumstance. This court finds, however from the evidence that the Plaintiff paid the sum of SLL 11,617,760.00 for 'demurrage' under



44

the protest, the same which brings into issue the dispute as to whether or not the said charge for and its payment was appropriate and applicable in the circumstances and whether or not the 1<sup>st</sup> Defendants were entitled to it. The term 'demurrage' in accordance with the 3<sup>rd</sup> Edition of the 'OXFORD UNIVERSAL DICTIONARY' means 'stay'; 'delay'; 'hesitation'; 'pause'; 'detention'. In shipping terms 'demurrage' means the payment made in respect of the detention of a vessel by the freighter beyond the time agreed on. Clearly, as from the definition aforesaid, the charge for and payment of 'demurrage' by the Plaintiff to the 1<sup>st</sup> Defendant was not appropriate and applicable in the circumstance as the freighter who is the Plaintiff herein did not detain any vessel of the 1<sup>st</sup> Defendant. What this court finds from the evidence as a whole is that the vessel carrying the Plaintiff's goods aforesaid discharged the said goods at the Ports of Freetown or about the 13<sup>th</sup> September 2013 thereby discharging its obligation to deliver the said goods. This court finds further that the said goods were to have been stored for five (5) days after it were so discharged and for the Plaintiff to take delivery of them promptly within the five (5) days period otherwise if the same were not done, 'demurrage' charges start accruing. This court holds the view therefore that the term 'demurrage' as used in this matter and in view of the definition above means, 'the payment made by the Plaintiff in respect of the storage of his goods beyond the time agreed on for it to be stored for which he would incur no charge for its storage and in this case five (5) days'. It is not disputed that the Plaintiff's goods were in storage for close to five (5) months after it were discharged by the vessel carrying it in the Ports of Freetown and certainly the same had incurred 'demurrage' charges. The pertinent question though is that, was it the 1<sup>st</sup> Defendant who should have been entitled to such payment of 'demurrage' by the Plaintiff. The 1<sup>st</sup> Defendant's contention is that it was them who were entitled to payment of 'demurrage' by the Plaintiff and in fact as stated above, notwithstanding the instructions given for the release of the said goods to the Plaintiff on the 7<sup>th</sup> February 2014, the same which is Exhibit B 28, the 1<sup>st</sup> Defendant did not release the said goods to the Plaintiff until the 12<sup>th</sup> February 2014 after the said Plaintiff paid them the sum of SLL 11,617,760. The 1<sup>st</sup> Defendant, further argued, albeit strenuously, that they in fact gave the Plaintiff a fifty percent (50%) discount on an amount of Four Thousand Five Hundred and Twenty Eight United States Dollars (US\$ 4,528) plus fifteen percent (15%) GST.

The 1<sup>st</sup> Defendant tendered in evidence Exhibits B 23 and B 24, in support of their contention above. Exhibit B 23 is an email correspondence between Jakob E. Nygaard, a representative of the 1<sup>st</sup> Defendant and P Randolph, a representative of the 1<sup>st</sup> Defendant's agents in the U.S.A, the same revealing that on the 11<sup>th</sup> February 2014 at 11:24 am Jakob E. Nygaard wrote to P. Randolph stating that 'correcting subject, as old case already closed. Correct bill of lading added. Please see attached -



45

consignee got 50% discount demurrage and promised to take release as soon as possible. Exhibit B 23 also reveals that in response and on the same 11<sup>th</sup> February 2014 at 16:50 hours P. Randolph wrote to Jakob E. Nygaard thanking Jakob E. Nygaard very much for his update and apologising for his mistake and stating that he will inform the shipper. Exhibit B 24 is also another email correspondence between Sallu Kanu, a representative of the 1<sup>st</sup> Defendant and M. Lauro a representative of the 1<sup>st</sup> Defendant's agents in the U.S.A, the same revealing that on the 11<sup>th</sup> February 2014 at 17:00 hours Sallu Kanu wrote to M. Lauro asking M. Lauro to kindly note container discharge port of discharge 15<sup>th</sup> September 2013 and demurrage till today is US\$ 4,528 plus 15% GST, stating further that consignee visited the office this afternoon requesting discount on demurrage so that he can take out container as soon as possible and for M. Lauro to kindly advise if they can offer at least 50% discount on demurrage so that consignee can take out equipment and they close this case, stating also that he is awaiting soonest reply. Exhibit B24 also reveals that in response and on the same 11<sup>th</sup> February 2014 at 16:08 hours M. Lauro wrote to Sallu Kanu giving Sallu Kanu go ahead with a fifty percent (50%) discount. Clearly Exhibits B 23 and B 24 does not in any way confirm that it was the 1<sup>st</sup> Defendant who should have been entitled to payment of 'demurrage' by the Plaintiff. What this court finds very absurd is why would the 1<sup>st</sup> Defendant at 17:00 hours on the 11<sup>th</sup> February 2014 by Exhibit B 24 seek permission from its agents in the U.S.A for a fifty percent (50%) discount on demurrage when earlier in the morning at 11:24 on the same 11<sup>th</sup> February 2014 as revealed by Exhibit B 23 it had already informed their agents in the U.S.A that the consignee, in this case the Plaintiff got fifty percent (50%) discount on demurrage, the said permission which was sought at a time when the 1<sup>st</sup> Defendant's agents in the U.S.A had already thanked the 1<sup>st</sup> Defendant for updating them on the Plaintiff getting the fifty percent (50%) discount. This court finds this absurdity to mean anything ranging from the fact that the 1<sup>st</sup> Defendants were very ignorant about this issue of payment of demurrage to the fact that Exhibits B 23 and 24 was pre planned and executed almost to deceive and cover up the fact that the 1<sup>st</sup> Defendant breached its obligations which is owed the Plaintiff in so far as the shipment of the Plaintiff's goods aforesaid from Oakland, U.S.A to Freetown Sierra Leone was concerned and that the demand for and payment of the sum of SLL 11,617,760.00 for demurrage by the Plaintiff was part of this cover up, the 1<sup>st</sup> Defendant fully well knowing that they should not have demanded it and were not entitled to it. This court holds the view that the person or institution which might have been entitled to payment of demurrage within the meaning given above and which would have been appropriate and applicable to the situation herein is that person or institution who stored the Plaintiff's goods aforesaid for the five (5) month period. This court finds no evidence whatsoever that it was the 1<sup>st</sup> Defendant who stored the Plaintiff's goods aforesaid for five (5) months. Otherwise and even assuming that it was them who so stored the



46  
goods for the five (5) months period during which they failed to release the said goods to the Plaintiff because he failed to pay the balance cost of freight for the shipping of his goods as they claim, the 1<sup>st</sup> Defendant should have been able to have the Plaintiff take delivery of his goods after he paid the sum of SLL 11,617,760.00. In this regard this court holds the view that the 1<sup>st</sup> Defendant were not entitled to the payment by and receipt of the sum of SLL 11,617,760.00 from the Plaintiff as 'demurrage'.

As regards the Plaintiff's claim above against the 2<sup>nd</sup> Defendant herein for the matters aforesaid, the Plaintiff concedes that he has not made out a successful claim against her in this regard. M.P FOFANAH ESQ. of Counsel for the Plaintiff submitted that the 2<sup>nd</sup> Defendant was sued solely for the purpose of injuncting her from auctioning the Plaintiff's goods aforesaid. As I had stated earlier it is not disputed that the Plaintiff's goods aforesaid were put up for auction by the Government of Sierra Leone through its official auctioneer, the 2<sup>nd</sup> Defendant herein and that some of the goods had been sold already even before the grant of the injunction restraining the said 2<sup>nd</sup> Defendant from selling the said goods by order of this court dated 3<sup>rd</sup> July 2014. The 2<sup>nd</sup> Defendant's contention and her evidence adduced in this regard is that she is a public Auctioneer and that her primary duty as a public Auctioneer is to sell unclaimed and abandoned goods at the state warehouse, Queen Elizabeth II Quay through the supervision and involvement of the Public Auction Committee comprising representatives from the Ministry of Finance and Economic Development, Customs and Excise Department of the National Revenue Authority and the Sierra Leone Ports Authority. The 2<sup>nd</sup> Defendant testified that the Plaintiff's goods were sold by her in accordance with guidelines as set out in the Best Practice Guide for Auctions, the same which she tendered in evidence marked Exhibit C 55 – 68. The 2<sup>nd</sup> Defendant testified that in January 2014 she received from the Public Auction Committee, copies of publications by the Sierra Leone Gazette with instructions to do a price list of the goods to be auctioned which she did and had it sent to the said committee for their approval. The 2<sup>nd</sup> Defendant testified that the said price list was approved by the Public Auction Committee on the 19<sup>th</sup> February 2014 and on the 20<sup>th</sup> February 2014, the said committee went and distributed the available gazetted items for sale to her and other auctioneers. The 2<sup>nd</sup> Defendant testified that after the said distribution she entertained bids for the gazetted items allocated to her for sale by issuing slips to the highest bidders. She testified that on the 25<sup>th</sup> February 2014 she issued a slip to the highest for container number 794617-2 containing a 1987 Nissan Pathfinder 4x4 vehicle, VINJN8HD16Y3HWO14952, one of the Plaintiff's goods aforesaid. The 2<sup>nd</sup> Defendant testified that on the 7<sup>th</sup> March 2014 she issued another slip to the highest bidder for container number 794617-2 containing the one hundred and twenty five (125) packages/boxes of personal effects



47

AESITN: X20130521034171, some of the Plaintiff's goods aforesaid. The 2<sup>nd</sup> Defendant testified that on the 14<sup>th</sup> March 2014 she was served with the writ of summons herein and its accompanying statement and particulars of claim and on the 24<sup>th</sup> March 2014, the Public Auction Committee sent to her a copy of a Court order dated 19<sup>th</sup> day of March 2014 the same which was an interim injunction restraining her from proceeding to auction, sell, dispose of, lease, mortgage or in any other way deal with or interfere with the Plaintiff's goods aforesaid until an application for the grant of the same was heard and determined. The Defendant testified that at a meeting of the Public Auction Committee she informed the said committee that some of the Plaintiff's goods as above had already been delivered to bidders, as a result of which it was pronounced at the said meeting that the remaining goods of the Plaintiff aforesaid, those being a 2002 Nissan Xterra 4x4 vehicle, VIN 5N1ED28YX2G560511 and a 1995 Mercedes Benz S. 420 car, VIN WDGBA3E55A251943, continue to occupy the ports in compliance with the order of the Court aforesaid.

The 2<sup>nd</sup> Defendant's testimony above was not disputed and or controverted in anyway whatsoever, by any other testimony including cross examination of her by A. SHOWERS ESQ. of Counsel for the 1<sup>st</sup> Defendant herein. This court holds the view that if anything, the testimony of the 2<sup>nd</sup> Defendant above and her cross examination aforesaid merely confirms the fact that the 1<sup>st</sup> Defendant were not the person or institution which stored the Plaintiff's goods aforesaid for the five (5) months period. This court finds conclusively that storage of the Plaintiff's goods aforesaid was done by the Government of Sierra Leone at the state warehouse, Queen Elizabeth II Quay in Freetown, Sierra Leone. Notwithstanding the fact that under cross examination of DW2, the 2<sup>nd</sup> Defendant herein, A SHOWERS ESQ. of Counsel for the 1<sup>st</sup> Defendant unsuccessfully attempted to distinguish between demurrage charges on the one hand and storage fees on the other hand insinuating that the sum of SLL 11,617,760 which the Plaintiff paid and which they received was for storage fees which they were entitled to, this court holds the view that be it demurrage charges or storage fees, the fact still remains and which cannot be changed, that the 1<sup>st</sup> Defendants were not the persons or institution who stored the Plaintiff's goods for the five (5) months period aforesaid and in this regard cannot be entitled to the sum of SLL 11,617,760. The Plaintiff's claim therefore for the recovery of the said sum of SLL 11,617,760 from the 1<sup>st</sup> Defendant succeeds. Further the Plaintiff's claim for the recovery of a 2002 Nissan Xterra 4x4 vehicle VIN 5N1ED28YX2C560511, a 1987 Nissan Pathfinder 4x4 vehicle VIN JN8HD16Y3HWO14952, a 1995 Mercedes Benz S. 420 Car, VIN WDBGA43E55A 251943 and One Hundred and twenty-five (125) Packages/Boxes of personal effects, AESITN : X20130521034171 or their value succeeds as against the 1<sup>st</sup> Defendant by reason of the above and in particular by reason that the said 1<sup>st</sup>



48

Defendant breached its obligation it owed to the Plaintiff to promptly notify him of the arrival of his goods aforesaid in the Ports of Freetown from Oakland U.S.A, and by reason that the 1<sup>st</sup> Defendant breached its obligation to take the necessary steps and promptly release the Plaintiff's goods aforesaid to him, which he had shipped from Oakland U.S.A when the said goods arrived in the Ports of Freetown on or about the 13<sup>th</sup> September 2013 for the Plaintiff to take delivery of the said goods, the said breach which led to the said goods being seized and some of it auctioned by the 2<sup>nd</sup> Defendant herein. In this regard the Plaintiff is entitled to his claim against the 1<sup>st</sup> Defendant for damages for the 1<sup>st</sup> Defendant's breach of its obligation aforesaid.

The Plaintiff's claim against the 2<sup>nd</sup> Defendant for recovery of his goods aforesaid and for recovery of the sum of SLL 11,617,760.00 fails by reason of the above and by reason that it has not been shown whether in fact or by law, that the 2<sup>nd</sup> Defendant acted ultra vires her duties as a Public Auctioneer. A BAH ESQ. of Counsel for the 2<sup>nd</sup> Defendant referred this court to Section 11 (1) (b) of the Customs Act 2011 which stipulates that 'No goods shall be released from customs control until the importer pay all duties and taxes if any on the goods...' and Section 25 (5) of the same act which provides that 'where the Commissioner General directs the sale of any abandoned, seized, forfeited or confiscated goods by auction under this Act and the regulations... the goods shall be sold by auction or tender after such public notice as is prescribed or in the absence of such prescription after reasonable public notice'. As submitted by Counsel for the 2<sup>nd</sup> Defendant, this court finds no evidence that the Plaintiff's goods aforesaid could have been cleared without the payment of all duties and taxes, and finds no evidence that the Plaintiff paid such duties or taxes to the Government of Sierra Leone before the expiration of the sixty (60) days grace period within which the said goods ought have been cleared as stipulated in the Best Practice Guide for Auction which was tendered in evidence as Exhibit C 55 - 68. This Court finds further that the Plaintiff's goods were gazetted for auction in the Sierra Leone Gazette on two different dates as evidenced by Exhibits C 28 - 29 tendered in evidence and finds that on the 7<sup>th</sup> and the 8<sup>th</sup> January 2014, five (5) different publications were made on three (3) different newspapers as evidenced by Exhibits C 40 - 44. This court holds the view that by virtue of this court's findings above, the 2<sup>nd</sup> Defendant acted within the scope of her duties as a Public Auctioneer of the Government of Sierra Leone and that the provisions of the Customs Act 2011 aforesaid were complied with in so far as the sale of a 1987 Nissan Pathfinder 4x4 vehicle, VINJN8HD16Y3HWO14952 and the one hundred and twenty five (125) packages/boxes of personal effects AESITN: X20130521034171, some of the Plaintiff's goods aforesaid are concerned. The Plaintiff's claim therefore, for a permanent injunction restraining the 2<sup>nd</sup> Defendant whether by herself, her servant, privies, agents and or employees from proceeding to auction, sell, dispose or lease,



49

mortgage or in any other way deal in or interfere with the Plaintiff's goods aforesaid fails completely. In this regard this court holds the view that this court's order dated 19<sup>th</sup> March 2014 and the 3<sup>rd</sup> July 2014, granting an interim and interlocutory injunction respectively restraining the 2<sup>nd</sup> Defendant herein from auctioning, selling, disposing of, leasing, mortgage or any other way dealing or interfering with the Plaintiff's goods aforesaid, the same which prevented the 2<sup>nd</sup> Defendant from selling the Plaintiff's goods which were yet to be sold these being a 2002 Nissan Xterra 4x4 vehicle, VIN 5N1ED28YX26560511 and a 1995 Mercedes Benz S.420 car VIN WDBGAE55A251943 ought not to have been granted by virtue of the fact that the Plaintiff had failed to pay duties and taxes on the said goods within the sixty (60) days period granted him to do so and as a result the said goods were declared abandoned and seized by the Government of Sierra Leone, it now being the property of the Government of Sierra Leone. In this regard this Court holds the view further that the 2<sup>nd</sup> Defendant who ought not to have been restrained aforesaid is entitled to damages which she may have incurred by reason of the grant of the injunction aforesaid, the same which should be recoverable from the 1<sup>st</sup> Defendant herein, by reason that the Plaintiff herein would not have applied for and be granted the Injunction aforesaid had the 1<sup>st</sup> Defendant not breached its obligations aforesaid which it owed the Plaintiff in respect of the shipment of his goods aforesaid from Oakland U.S.A. to the Ports of Freetown, Sierra Leone.

By reason of the above and on a balance of probabilities it is hereby ADJUDGED and ORDERED as follows:

- 1) That the Plaintiff recovers from the 1<sup>st</sup> Defendant his goods, these being a 2002 Nissan Xterra 4x4 vehicle VIN 5N1ED28YX2C560511, a 1987 Nissan Pathfinder 4x4 vehicle VIN JN8HD16Y3HWO14952, a 1995 Mercedes Benz S. 420 Car, VIN WDBGA43E5SA251943 and One Hundred and twenty-five (125) Packages/Boxes of personal effects, AESITN : X20130521034171 or their value, the same to be assessed by this court.
- 2) That the Plaintiff recovers from the 1<sup>st</sup> Defendant the sum of SLL 11,617,760.00 (Eleven Million Six Hundred and Seventeen Thousand Seven Hundred and Sixty Sierra Leone leones) plus interest on the said amount from February 2014 to date of Judgement at a rate of twenty five percent (25%) per annum.
- 3) That the Plaintiff recovers from the 1<sup>st</sup> Defendant, damages for the 1<sup>st</sup> Defendants failure to promptly release to the Plaintiff his goods aforesaid when



it arrived in the Ports of Freetown Sierra Leone from Oakland, U.S.A where the said goods were shipped from, the said damages to be assessed.

50

- 4) That the 2<sup>nd</sup> Defendant recovers from the 1<sup>st</sup> Defendant, damages which the said 2<sup>nd</sup> Defendant might have incurred by reason of the grant of the injunction restraining her from selling the Plaintiff's goods aforesaid by Court Orders dated 19<sup>th</sup> March 2014 and 3<sup>rd</sup> July 2014 respectively.
- 5) That the Plaintiff and the 2<sup>nd</sup> Defendant recovers from the 1<sup>st</sup> Defendant the costs of the action herein, the same which shall be taxed if it is not agreed upon by the parties.

 JA

MR JUSTICE ALLAN B. HALLOWAY JA

Delivered this 31<sup>st</sup> day of May 2016.