**Babulal Narshi & Co Ltd v Deutsche Ost-Afrika-Linie**

**Division:** High Court of Kenya at Mombasa; Court of appeal at Mombasa

**Date of judgment:** 27 July 1974

**Case Number:** 168/1974 (118/74); 54/1974 (52/75)

**Before:** Sir Dermot Sheridan J, Spry Ag P, Law Ag V-P and Musoke JA

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*[1] Shipping – Bill of lading – Clean bill – Carrier not estopped from alleging improper packing.*

*[2] Shipping – Bill of lading – Improper packing – Can only be relied on when loss or damage results*

*from improper packing.*

**Editor’s Summary**

A shipper shipped goods to Mombasa in the defendant’s ship on a bill of lading showing the goods to have been shipped in apparent good order and condition and without any endorsement concerning insufficient packing.

The plaintiff bought the goods after shipment and the bill of lading was endorsed over to it. The goods were short-landed in Mombasa. The bill was subject to the Hague Rules.

On the plaintiff’s suit, the defendant alleged that the goods were insufficiently packed having been packed in cartons. The plaintiff contended that the bill was a clean bill and that the defendant was estopped from alleging defective packing.

**Held –**

(i) The bill of lading was a clean bill and the defendant was estopped from alleging any defect in packing (*Silver v. Ocean Steamship Co*. (2) followed; *Dominion Sugar Co. v. Canadian National Steamship* (*West Indies*) (4) distinguished);

(ii) Improper packing can only be relied upon on proof that the loss or damage resulted from the improper packing.

Judgment for the plaintiff.

**Cases referred to Judgment:**

(1) *Gould v. South Eastern and Chatham Railway Co*., [1920] 2 K.B. 186.

(2) *Silver v. Ocean Steamship Co*., [1930] 1 K.B. 416.

(3) *The Skarp* [1935] P. 134; [1935] All E.R. Rep. 560.

(4) *Canada & Dominion Sugar Co. v. Canadian National* (*West Indies*) *Steamships*, [1947] A.C. 46; 80

L1. L. Rep. 13.

(5) *British Imex Industries v. Midland Bank*, [1958] 1 K.B. 542; [1958] 1 All E.R. 264.