**Unibilt Kenya Ltd (Under Receivership) v Mukhi and Sons Ltd**

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of Judgment:** 21 June 2004

**Case Number:** 219/01

**Before:** Azangalala AJ

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Contract – Lien – Election – Whether by filing suit party loses right of lien – Whether doctrine of election applicable under the circumstances.*

**Editor’s Summary**

The plaintiff sued the defendant seeking an order compelling the defendant to deliver to the plaintiff 31 pallets of tin plates, damages, interest on damages and costs. The defendant filed a defence counterclaim seeking a declaration that it had a lien over the said pallets and further sought an order compelling the plaintiff to pay the defendant’s charges in default the defendant be at liberty to sell the said pallets to recover its charges.

The parties agreed on issues for determination as follows:

(i) Whether the defendant was put on election between suing the plaintiff for charges or retaining the plaintiff’s cargo in exercise of its lien.

(ii) Whether by instituting High Court civil case number 689 of 1998 the defendant had lost its right of lien.

**Held –** The defendant was not put on election between suing the plaintiff for charges or retaining the plaintiff’s cargo in exercise of its lien because the filing of the High Court Suit was consistent with the defendant’s lien on the cargo. By instituting the High Court Case the defendant in the present case did not lose its right of lien over the plaintiff’s cargo. Suit dismissed, counterclaim allowed with costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***United Kingdom***

*Brewer v Sparrow* 1827 7B and C 310 (1824-34) All ER 525 – **C**

*Re British Tea Table Company [1897] Ltd v The company* [1910] 101 LTP 707 – **C**

*George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900 – **C**