



**I & M Bank Limited v Kariuki & 3 others (Civil Suit E209 of 2022)
[2023] KEHC 1248 (KLR) (Civ) (24 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT E209 OF 2022**

JK SERGON, J

FEBRUARY 24, 2023

BETWEEN

I & M BANK LIMITED PLAINTIFF

AND

GEOFFREY NG'ANGA KARIUKI 1ST RESPONDENT

NATIONAL TRANSPORT AND SAFETY AUTHORITY 2ND RESPONDENT

GEOFFREY NGUGI GITHUA 3RD RESPONDENT

MOMENTUM CREDIT LIMITED 4TH RESPONDENT

RULING

1. The plaintiff/applicant herein has brought the notice of motion dated October 25, 2022 supported by the grounds set out on the body thereof and the facts stated in the affidavit of Collins Oyuu whereof the applicant sought for the following orders:
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. Pending the hearing and determination of the suit herein this Honourable Court be pleased to issue a mandatory injunction against the defendants, either by themselves, their agents, employees, assigns, agents or any other persons acting under the defendants authority from carting away, disposing off, transferring, selling, or in any manner whatsoever, parting with possession of the motor vehicle Registration No.KBV 282 N make Toyota Land Cruiser



Engine Number 2UZ1177115 Chassis No.UZJ100-0160000 or any part thereof ,other than as prescribed in this application .

- v. An order due issue that the 2nd defendant and the National Police Service do investigate the unlawful deregistration or illegal transfer of the Motor Vehicle Registration No. KBV XXXN make Toyota Land Cruiser Engine Number 2UZXXX7115 Chasis No. UZJ100-016XXX0 from the 1st defendant & the plaintiff to the 3rd and 4th defendant, and infer criminal charges in accordance with the provisions of section 40 & 53 of the [National Transport and safety Authority Act](#) No.33 of 2012.
 - vi. Any other order that this Honourable Court shall deem mete and just.
 - vii. Costs of this application be borne by the respondent.
2. In opposing the said Motion, the 2nd, 3rd and 4th defendants/ respondents filed their replying affidavits on January 24, 2023, December 20, 2022 and December 13, 2022 respectively.
 3. A brief background of the matter is that the applicant herein advanced monies to the 1st defendant who defaulted on the terms and accordingly the applicant commenced with exercise of its right of redemption. The 1st defendant filed Milimani CMCC no. 503 of 2016 Geoffrey Ng'ang'a Kariuki v I & M Bank Limited where the court entered judgment in favour of the applicant for the sum of Kshs.19,008,905.47/= owing from the plaintiffs as at February 7, 2018 .
 4. That at all material times, in respect of the Motor Vehicle Toyota Land Cruiser registration No. KBV 282N the same was registered in favour of the 1st defendant and the applicant being beneficial owner by virtue of being a financier to purchase of the aforesaid motor vehicle. Accordingly the 2nd defendant is not only the custodian of all records pertaining to motor vehicle registration but also as the regulator is responsible for all motor vehicle transfers and registration.
 5. That sometime in August 2021, the applicant discovered that through fraud, illegality, collusion and mischief the 1st defendant proceeded to have the plaintiff unregistered as a beneficial owner of the motor vehicle Toyota Land Cruiser registration No. KBV 282N. Further it is noted that the said motor vehicle was thereafter transferred to the 3rd and 4th defendant without undertaking the appropriate legal action.
 6. The applicant avers that the aforesaid action has occasioned them to be unjustly disenfranchised and prejudiced by incurring a loss of its security held in the property, and further threatens the applicant's right as a bank to hold security.
 7. That the applicant has on numerous occasions issued demand notices seeking intervention of the 2nd defendant which demands have been neglected and/or disregarded thus warranting the recovery of the said motor vehicle.
 8. In response, the 2nd defendant/respondent stated that it has since placed a caveat on the said motor vehicle pending the hearing and determination of the case and that once the plaintiff/applicant raised a complaint with the 2nd respondent, they preserved the said vehicle pending investigations.
 9. The 2nd defendant/respondent further stated that the 1st respondent should explain how he was discharged from the joint ownership and subsequently transferred to the 3rd respondent knowing very well that the plaintiff had the original logbook.
 10. The 3rd defendant/respondent avers that he is not in possession of the said vehicle as he sold it to one Lawrence Opondo who is awaiting servicing of the loan he secured with the fourth defendant after



which transfer and issue him the logbook that is still withheld by the fourth defendant. This means that if there were concealment of any facts or defects arising from the conduct of previous proprietors, to which he had no notice of, the same cannot be held against him.

11. He further avers that he paid money for a legal good title, thus whatever the 1st and 2nd defendants/respondents' crime may be, he is innocent and equity should not subject him to punishments associated with that wrongdoing.
12. The 4th defendant/respondent states that it conducted due diligence on the subject motor vehicle and having being satisfied with the search results, valued the subject motor vehicle and subsequently disbursed to the 3rd defendant a facility of Kshs.1,150,000/= payable in 18 equal installments of Kshs.117,809/=
13. The 4th defendant/respondent further stated that it is not privy to the alleged beneficial ownership of the plaintiff/applicant with respect to the subject motor vehicle and that it's a stranger to the alleged fraudulent transactions between the 1st, 2nd and 3rd defendants as alleged.
14. In granting interlocutory mandatory injunctions were well stated in the case of *Kenya Breweries Ltd & another vs Washington O. Okeyo* [2002] eKLR where the Court of Appeal said;

“The test whether to grant a mandatory injunction or not is correctly stated in Vol.24 Halsbury's Laws of England 4th Edition paragraph 948 which read:-

‘A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiffs ... a mandatory injunction will be granted on an interlocutory application.’

15. The Court of Appeal quoted with approval an English decision in the case of *Locabail International Finance Ltd vs Agroexport and others* (1986) 1 ALLER 901 where it was stated:-

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly be granted, that being a different and higher standard than was required for a prohibitory injunction.”

16. Also in the case of *Nation Media Group & 2 others vs John Harun Mwan* [2014] eKLR the Court of Appeal said:-

“It is strite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances ... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.”



17. On examination of the case at hand I agree with the applicant that is seeking mandatory injunction in order to preserve the aforesaid motor vehicle to recover the funds duly owed to it by the 1st defendant and also to ensure justice in these proceedings.
18. Further, the suit herein raised substantive issues of law pertaining to the duty of care owed by the regulator, the 2nd defendant and the rights of the bank's financier in respect of loss of assets that for security.
19. That unless the orders therein are granted then the bank stands to suffer irreparable loss because the said property is the only security available to the Bank in recovery of the loan advanced to the 1st defendant.
20. In light of the above I find that the applicant has met the ingredients necessary for the grant of a mandatory injunction. Consequently, the motion dated 1st September 2020 is allowed, giving rise to the following orders:
 - i. Pending the hearing and determination of the suit, a prohibitory order of injunction be and is hereby issued restraining the defendants, either by themselves, their agents, employees, assigns, agents or any other persons acting under the defendants authority from carting away, disposing off, transferring, selling or in any manner whatsoever, parting with possession of the Motor Vehicle Registration No. KBV 282N make Toyota Land Cruiser Engine Number 2UZ1177115 Chasis No.UZJ100-0160000 or any part thereof ,other than as prescribed in this application.
 - ii. An order is hereby issued directing the 2nd defendant and the National Police Service to investigate the unlawful deregistration or illegal transfer of the Motor Vehicle Registration No. KBV 282N make Toyota Land Cruiser Engine Number 2UZXXX7115 Chasis No.UZJ100-016XXX0 from the 1st defendant & the plaintiff to the 3rd and 4th defendants, and infer criminal charges in accordance with the provisions of sections 40 & 53 of the National Transport and safety Authority Act No.33 of 2012.
 - iii. Costs of the motion to abide the outcome of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2023.

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J. K. SERGON
JUDGE

In the presence of:

- for the Plaintiff/Applicant
 for the 1st Defendant/Respondent
 for the 2nd Defendant/Respondent
 for the 3rd Defendant/Respondent
 for the 4th Defendant/Respondent

