



**Abdalla v Karisa; Mwangangi (Interested Party) (Civil Appeal  
E001 of 2020) [2023] KEHC 27121 (KLR) (21 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27121 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
CIVIL APPEAL E001 OF 2020  
SM GITHINJI, J  
DECEMBER 21, 2023**

**BETWEEN**

**BASHIR ALI ABDALLA ..... APPELLANT**

**AND**

**PETER LUGANJE KARISA ..... RESPONDENT**

**AND**

**JOHN MUSYA MWANGANGI ..... INTERESTED PARTY**

**RULING**

1. On 15<sup>th</sup> December 2020, and following an application for stay pending appeal, orders were issued by this court that the subject motor vehicle number KBH 834X be moved from the custody of the auctioneer or any such third party in possession to Garsen Police Station, pending further orders. Those orders were then set aside vide a ruling dated 5<sup>th</sup> May 2022. The court ordered the motor vehicle be released to the Interested Party, who had purchased the motor vehicle at a public auction on 25<sup>th</sup> November 2020. Subsequently, the Applicant filed an application dated 18<sup>th</sup> May 2022 seeking orders inter alia that the ruling dated 5<sup>th</sup> May 2022 be reviewed and the orders issued on 15<sup>th</sup> December 2020 be reinstated.
2. Before that application could be heard and determined, the Applicant filed another application dated 11<sup>th</sup> January 2023 which is the subject of this ruling. The Applicant seeks the following orders: -
  1. Spent.
  2. Spent.



3. That and/or in the alternative, a temporary restraining injunction hereby do issue as against the Interested Party from transferring the contended asset namely KBH 834X to a third party pending the outcome of the application dated 18<sup>th</sup> May 2022.
4. That the costs of this application be borne by the Respondents.
3. The application is founded on the grounds outlined on the face of it and the supporting affidavit sworn by the Applicant on the even date, wherein he deposed that on 9<sup>th</sup> January 2022, he received a text message from an alleged agent of the Interested Party informing him of his (the Interested Party) intention to transfer the motor vehicle to a third entity. That if the vehicle is transferred the application dated 18<sup>th</sup> May 2022 shall be rendered nugatory.
4. The Respondent opposed the application. He filed a Replying Affidavit sworn by his advocate, Mr. Geoffrey Kilonzo on 27<sup>th</sup> January 2023 who deposed that the application is bad in law, frivolous, vexatious, unmerited and an abuse of the court process since it is similar to all the former numerous applications filed by the Applicant. He added that there is no order barring the Interested Party from disposing the motor vehicle and there is no proof of the alleged intended sale.
5. The application was canvassed by way of written submissions. Notably, the Interested Party did not file any response or submissions. I have however carefully considered submissions filed by the Applicant and Respondent. I find that the sole issue for determination is whether a temporary injunction should issue restraining the Interested Party from transferring the motor vehicle to a third entity.

### **Analysis and Determination**

5. The law governing granting of interlocutory injunctions is set out under order 40(1) (a) and (b) of the [\*Civil Procedure Rules\* 2010](#) which provides that: -
  - Where in any suit it is proved by affidavit or otherwise—
    - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
    - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
6. In addition, the conditions for consideration in granting an injunction were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] EA 358 as follows: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”



7. The basis of the present application is that the Applicant is apprehensive that the Interested Party is in the process of selling the subject motor vehicle. The Applicant exhibited some mobile correspondence as his basis for the suspicion. I have perused the said correspondence written in Swahili language; there is no mention of the subject vehicle and the content therein is ambiguous. The Applicant has neither shown that he has a prima facie case with a probability of success nor has he demonstrated that he might suffer irreparable injury which would not adequately be compensated by an award of damages. As this court previously stated in the ruling of 5<sup>th</sup> May 2022, the substratum of the appeal is a motor vehicle whose value can be ascertained and the Applicant, if successful, can be adequately compensated by way of damages.
8. As such, I am not convinced that the Applicant has met the threshold to warrant the injunction sought. The outcome is that the Notice of Motion dated 11<sup>th</sup> January 2023 is devoid of merit and is hereby dismissed with costs to the Respondent.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 21<sup>ST</sup> DAY OF DECEMBER, 2023.**

**S.M. GITHINJI**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

