



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. E031 OF 2020

TITUS GITHINJI T/A TIMAU VENTURES.....APPELLANT

-VERSUS-

ELIAS WANYOIKE NGANGA.....1ST RESPONDENT

DUNCAN WAWERU.....2ND RESPONDENT

(Being an appeal from the Ruling and Order of the Chief Magistrate's Court at Thika (**Hon. V. Oguttu, R.M.**) in Thika CMCC NO. 636 of 2020 dated and delivered on 15th December, 2020)

JUDGMENT

1. This is an appeal against an interlocutory Ruling of Thika Chief Magistrate's court.
2. The pleadings before the Thika Magistrate's court reveal that **ELIAS WANYOIKE NGANGA** hereafter Elias purchased a Tuk-Tuk registration number KTWB 295G from **DUNCAN WAWERU** (hereafter **Duncan**). Elias and Duncan agreed that the logbook of that vehicle would be retained by Duncan until the final purchase price was paid by Elias.
3. Elias by his plaint before the trial court pleaded that while in the course of his normal taxi business he was hired by **Titus Githinji Nderitu** hereafter **Titus**. Elias pleaded that when he reached the destination of Titus, he learnt that the vehicle was being repossessed and indeed was detained.
4. Titus' case is Duncan secured a loan from his business, namely, **Timau Ventures** and offered the vehicle's logbook as security for that loan. Further, Titus' case is that there was default in repayment of the loan granted to Duncan and consequently, the action he took was to repossess the vehicle.
5. Elias filed an interlocutory application dated 10th November, 2020 seeking injunctive orders to restrain the selling and transferring of the vehicle and a mandatory injunction for the release of the vehicle.
6. The trial court by its Ruling dated 15th December, 2020 granted the restraining orders and the mandatory injunction for the release of the vehicle to Elias.

ANALYSIS

7. The trial court granted interlocutory injunction orders as sought by Elias. The main trial has not taken place. In considering interlocutory injunction it is important for the court not to decide the issues of fact. This caution was raised by the Court of Appeal in the case **MBUTHIA VS. JIMBA CREDIT FINANCE CORPORATION & ANOTHER (1988) eKLR** as follows:-

“The correct approach in dealing with an application for the injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. There is no doubt in my mind that the learned Judge went far beyond his proper duties, and has made final findings of fact on disputed affidavits.”

8. I have considered the trial court's Ruling and I do appreciate that the line drawn by the Court of Appeal in the case of ***Mbuthia vs. Jimba*** (*supra*) is sometimes difficult to maintain in considering interlocutory injunction. I am however satisfied that the trial court struck a balance in consideration of the evidence presented by the parties.

9. This is an appeal from an interlocutory Ruling where injunctive orders were issued. How this Court should approach this appeal was discussed in the case MROA LTD VS. FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS (2003) eKLR where the Court of Appeal stated:-

“The power of the Court in an application for an interlocutory injunction is discretionary. Such discretion is judicial. And as is always the case judicial discretion has to be exercised on the basis of the law and evidence. And as was stated by this Court in the case of CARL RONNING V SOCIETE NAVALE CHARGEURS DELMAS VIELJEUX (THE FRANCOIS VIELJEUX) [1984] KLR 1 an appellate court may only interfere with the exercise of judicial discretion if satisfied either;

(a) The judge misdirected himself on law, or

(b) That he misapprehended the facts, or

(c) That he took account of considerations of which he should not have taken an account, or

(d) That he failed to take account of consideration of which he should have taken account, or

(e) That his decision, albeit discretionary one, was plainly wrong.

10. In my reconsideration of the interlocutory application by Elias, I find and hold that the trial magistrate clearly took into account all the relevant matters and there is no matter that the trial court took which was irrelevant.

11. The trial court found on a prima facie basis that Elias proved he purchased the vehicle and that the loan transaction claimed by Titus was granted at period subsequent to that purchase. I concur with that finding of the trial court and find there were present special circumstances justifying the granting of mandatory injunction. What the court should consider where mandatory injunction is sought was stated in the case KENYA BREWERIES LTD & ANOTHER VS. WASHINGTON O. OKEYA (2002) eKLR thus:-

“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 been granted, that being a different and higher standard than was required for a prohibitory injunction.”

12. It is for the above reason that this appeal fails. The decision of the trial court is hereby upheld. The appeal is dismissed with costs.

13. The stay order issued herein on 18th December, 2020 and extended from time to time is hereby vacated.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 31ST DAY OF MARCH, 2022

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For Appellant: - N/A

For 1st Respondent : - (Elias Wanyoike) Ms. Waithera Mwangi

For 2nd respondent : - (Duncan Waweru): N/A

JUDGMENT delivered virtually.

MARY KASANGO

JUDGE