



**Muteti v Nyeri Motors Services Ltd & another (Civil Appeal  
E022 of 2021) [2022] KEHC 11598 (KLR) (24 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11598 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E022 OF 2021**

**GMA DULU, J**

**MAY 24, 2022**

**BETWEEN**

**NICHOLAS MBUNGA MUTETI ..... APPELLANT**

**AND**

**NYERI MOTORS SERVICES LTD ..... 1<sup>ST</sup> RESPONDENT**

**CRATER VIEW AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is an application dated 10<sup>th</sup> May 2021, and another dated 11<sup>th</sup> June 2021. The later is for the review of this court's initial orders. The application dated 11<sup>th</sup> June 2021 for review having been spent; the application dated 10<sup>th</sup> May 2021 is the only live application. This ruling will therefore be on the application dated 10<sup>th</sup> May 2021.
2. The application dated 10<sup>th</sup> May 2021 has been brought under Order 22 Rule 22 of the [Civil Procedure Rules](#), and section 1A, 1B and 3A of the [Civil Procedure Act](#) (Cap.21) and seeks the following orders –
  1. (Spent)
  2. This court be pleased to issue injunctive orders restraining the respondents from seizure, possession, attachment and or advertisement for sale of motor vehicle Registration No. KCJ 423N Mitsubishi FH pending hearing and determination of the appeal herein.
  3. The costs of this application be provided for.
3. The application has grounds on the face of the Chamber Summons that the applicant had made an application dated 27<sup>th</sup> July 2020 for injunctive orders in Makueni Civil Suit No. 71 of 2020 which was heard in the absence of the applicant and his advocate and dismissed in a ruling delivered on 23/03/2021 by the magistrate. That substantial loss will be suffered by the applicant if the orders of injunction sought herein are not granted as it will render the appeal nugatory.



4. The application was filed with a supporting affidavit sworn by the applicant Nicholas Mbunga Muteti on 10<sup>th</sup> May 2021, which annexes a number of documents, but not a Memorandum of Appeal.
5. The application has been opposed through a replying affidavit sworn on 10<sup>th</sup> July 2021 by Tajdin Nathoo Director of the 1<sup>st</sup> respondent, in which it was deponed that the applicant had not satisfied the requirements under Order 42 Rule 6 of the Civil Procedure Rules, and in particular that the applicant had not specified the irreparable loss that he will suffer.
6. In response, the applicant filed a further affidavit he swore on 1<sup>st</sup> November 2021 in which he reiterated that he had satisfied the requirements under Order 42 Rule 6(2) of the Civil Procedure Rules.
7. The application was canvassed through written submissions. I note however, that the applicant's counsel O.N Makau, in their submissions, referred mainly to the application dated 11/06/2021 for review, which has been spent and is not the application for decision presently. They relied on several court cases with regard to interim injunctive orders.
8. The respondent's counsel M/s Midikira & Company contended in their submissions that both the application dated 10<sup>th</sup> May 2021 and that dated 11/06/2021 were filed under the wrong provisions of the law. They thus urged this court not to entertain both applications. On the merits, the counsel argued that the applicant herein did not satisfy the requirements under Order 42 Rule 6(1) and (2) of the Civil Procedure Rules.
9. I have considered the application dated 10/05/2021 and the arguments on both sides. If it were not for the provisions of Article 159(2) of *the Constitution* of Kenya 2010, I would have dismissed the application dated 10/05/2021 straight away because I have not seen the Memorandum of Appeal filed herein, and nor has the applicant specifically referred to it in his application or submissions. It appears however that all parties agree that an appeal has been filed. I thus will not dismiss the application on that account.
10. As for citing the wrong sections of the law, I agree that the applicant has cited inappropriate sections of the law. However, again in view of the provisions of Article 159 of the Constitution, and since it is a fact that the law confers on this court power to issue injunctive orders, I will also not dismiss the application on that account.
11. This being an application seeking the grant of interim injunctive orders, the parameters stated in the case of *Giella -vs- Cassman Brown Ltd* [1973] E.A 358 do apply.
12. In my view, the applicant has a prima facie case with probability of success as I am informed that there is a pending case in the magistrate's court and an appeal from the ruling of the trial court has been filed herein.
13. As to whether there will be substantial loss to the applicant which cannot be adequately compensated in terms of damages, if the injunctive orders sought are not granted, I am doubtful as the loss due to the sale of the subject motor vehicle can be adequately compensated in the form of damages if it is found to be wrongful. I so find.
14. The balance of convenience is also in favour of the respondent, as I have not been provided with any evidence or commitment by the applicant to pay the debt, which he admits has been owing. I also take note that Covid-19 pandemic has now eased, and in my view, by now the parties should have agreed on a workable mode of payment of the amount owing. The application will thus fail.
15. As for costs, I will award costs of the application to the respondent.



16. Consequently and for the above reasons, I find no merits in the application dated 10/05/2021 and dismiss the same. Any interim orders granted by this court are hereby vacated. The costs of the application are awarded to the 1<sup>st</sup> respondent. I will fix the appeal for mention hereafter for directions.

**DELIVERED, SIGNED & DATED THIS 24<sup>TH</sup> DAY OF MAY, 2022, IN OPEN COURT AT MAKUENI.**

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**GEORGE DULU**

**JUDGE**

