



**Nderitu v Springboard Capital Limited (Civil Appeal  
90 of 2020) [2022] KEHC 12648 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12648 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 90 OF 2020  
MM KASANGO, J  
JULY 27, 2022**

**BETWEEN**

**GABRIEL NDERITU ..... APPELLANT**

**AND**

**SPRINGBOARD CAPITAL LIMITED ..... RESPONDENT**

**RULING**

1. Gabriel Nderitu, the appellant filed this appeal against the interlocutory Ruling of Thika Chief Magistrate's Court in Civil Case No. 217 of 2020. By that Ruling, the trial magistrate declined to grant the appellant an injunction to restrain the respondent, Springboard Capital Limited, from seizing motor vehicle registration No. KCA 928K. That subject motor vehicle is a security for a loan facility granted to the appellant by the respondent. The respondent contends it seized the subject motor vehicle following the appellant's default in repayment of the said loan.
2. The appellant has filed far too many application before this Court, than I care to count. He initially filed an application dated July 17, 2020 seeking to restrain the respondent from selling the subject motor vehicle and also seeking mandatory injunction requiring the respondent to release the subject vehicle to him.
3. Although there are numerous applications filed in this appeal I will, however focus my attention on the application dated November 22, 2020. That application is filed by the respondent. The respondent by that application seeks to have the order issued by this Court dated October 22, 2020, set aside.
4. On October 22, 2022 the court made the following order:-

“The respondent was served with application filed on September 29, 2020 but is absent and has not filed any response. Application filed on September 29, 2020 allowed on condition that the application (appellant) continues to make monthly payments as ordered on July



20, 2020 and should not deal in any manner with the subject vehicle as would be adverse to the respondent's interest."

5. The application filed on September 28, 2020 was for an order that:-

"Pending the hearing and the determination of this application even appeal herein there be orders that the respondent unconditionally release motor vehicle registration number KCA 928K to the appellant."

6. The above order in that application was the one issued on October 22, 2020 in the absence of the respondent. It is that order the respondent seeks to have set aside.

7. The appellant filed a replying affidavit and grounds of opposition to the application. The main thrust of the appellant's opposition is that the respondent has no right to be heard because it is in contempt of court and further that the orders the respondent seeks are tantamount to an appeal.

8. I have considered the affidavit evidence and the submissions of the parties and the following is my view of this matter.

9. The application filed in court on September 29, 2020 was served on the respondents on October 10, 2020. That is according to the affidavit of service dated October 19, 2020 of Patrick Gitamo Ogeri. Because that affidavit is very crucial to the determination of the application before court, I shall reproduce it here:-

"I Patrick Gitamo Ogeri of Gepo Investment P.O. Box 61963-00100 Nairobi do solemnly make oath and state as follows:-

1. That I am a process server of the High Court duly authorized to serve this court process.
2. That on October 10, 2020 I received Notice of Motion dated September 28, 2020, and a hearing notice for October 21, 2020 from Oduor Henry John Advocates with instructions to personally serve the same upon the respondent herein.
3. That on the same date, I proceeded to the respondent's advocate's office at Greens Way house 4<sup>th</sup> Floor Nairobi where I introduced myself to the advocate's secretary and the purpose for my visit. She acknowledged on behalf of the advocate by retaining her set of the said court documents and endorsed her signature and stamp."

10. The process server attached to his said affidavit of service the certificate of urgency dated September 28, 2020. On that certificate of urgency, there is a stamp of the advocate for the respondent and the date indicated thereof, as the date of service is October 15, 2020 and not October 10, 2020 as stated in the affidavit of service.

11. Although the respondent in support of the application under consideration concentrated on the fact that the vehicle it was required, by the impugned court order of October 2, 2020, to release was its security for the loan which the appellant has allegedly defaulted to pay. I find the issue that will determine the application is a finding on whether the respondent's right to be heard on October 22, 2020 was violated.



12. The affidavit of service of Patrick Gatimo Ongeru indicated the respondent's advocates were served with the application and hearing notice for October 21, 2020. In other words, the advocate for the respondent was served with a hearing notice of the application for 21<sup>st</sup> October, when in fact the application was heard on October 22, 2020, and orders were issued in the absence of the respondent. It is clear from that analysis that the respondent's right to be heard, which is a basic natural justice concept was violated. The respondent was served with a hearing notice for October 21, 2020 for the hearing of the application dated September 29, 2020. This is despite the fact that the application was before court on October 22, 2020 when adverse orders were issued against the respondent in its absence.
13. Article 50(1) of the constitution provides for fair hearing. It states:-

“ 50(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate another independent and impartial tribunal or body.”
14. Although that Article is directed at criminal trial that principle of fair trial cuts across to other trials. This is what was held in the case Pinnacle Projects Limited vs. Presbyterian Church of East Africa, Ngong Paris Another (2019) eKLR. In that case it was stated as follows in relation to Article 50:-

“ While the wording of Article 50 of the Constitution on the right to a fair hearing prima facie seems to focus on criminal trials its not lost that fair trial in civil cases includes: the right of access to a court, the right to be heard by a competent independent and impartial tribunal ...”
15. In view of that obvious violation of the respondent's constitutional right, of the right to be heard, the prayer sought to set aside the order of October 22, 2020 is merited.
16. I direct that this appeal be heard on priority basis and to that end, a mention date will be fixed before the Deputy Registrar for the purpose of requesting the trial court's file be availed.

### **Disposition**

17. For the above reasons, the determination and orders in respect to the notice of motion dated November 2, 2020 are as follows:-
  - (a) The application succeeds and accordingly the order issued by this Court on October 22, 2020 is hereby vacated and set aside.
  - (b) The costs of the application are awarded to the respondent.

**RULING DATED AND DELIVERED AT KIAMBU THIS 27<sup>TH</sup> JULY, 2022.**

**MARY KASANGO**

**JUDGE**

**In the presence of:-**

**Coram:**

Court Assistant:- Mourice

For Appellant:- No appearance

For Respondent:- No appearance

Court



Ruling delivered virtually,

**MARY KASANGO**

**JUDGE**

