



**Ahmed Ali Twahir t/a Kilindini Royal Transport Services v MJ Clarke Limited  
(Civil Suit E073 of 2021) [2022] KEHC 17086 (KLR) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 17086 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E073 OF 2021  
MN MWANGI, J  
NOVEMBER 25, 2022**

**BETWEEN**

**AHMED ALI TWAHIR T/A KILINDINI ROYAL TRANSPORT  
SERVICES ..... DEFENDANT**

**AND**

**MJ CLARKE LIMITED ..... DEFENDANT**

**RULING**

1. The defendant filed a Notice of Motion application dated 6<sup>th</sup> December, 2021, brought under the provisions of Articles 40, 159 and 165(3)(a) of *the Constitution*, Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, Order 40 Rule 1(ii) & 1 (sic), 2 and 10, Order 51 Rule 1 of the Civil Procedure Rules, Sections 5A, 5B, 8 and 9 of the *Traffic Act* and all enabling provisions of the law. The defendant/ applicant seeks the following orders from this Court: -
  - i. Spent;
  - ii. That pending the hearing and determination of this suit, the Honourable court be pleased to direct the plaintiff to supply to the defendant with a duly registered account under National Transport and Safety Authority (Transport Integrated Management System-NTSA) TIMS portal;
  - iii. That pending the hearing and determination of this suit, the Honourable Court be pleased to direct that the plaintiff to allow the police directed by the defendant to have reasonable access to motor vehicles KBV 261E, KBP 754Z, KBU 920N, KCG 905S and trailer ZE 3400 for the purposes of “tape lifting” to establish the genuineness of the chassis and engine number for the subject motor vehicles;



- iv. That consequent to the grant of the prayers B and C above the plaintiff be directed/ordered to accept the transfer of the subject motor vehicles and trailers under NTSA-TIMS portal and pay the applicable fees transfer;
  - v. That consequent to the grant of the prayers above the Honourable Court be pleased to issue such further or other direction(s) and order(s) as may be necessary to give effect to the foregoing orders, and as it may deem just and expedient for the ends of justice;
  - vi. That this Honourable Court be pleased to issue such further or other orders(s) as it may deem just and expedient for the ends of justice
  - vii. Spent; and
  - viii. That the costs of this application be provided for.
2. The application is anchored on the supporting affidavit and further affidavit sworn on 6<sup>th</sup> December, 2021 and 31<sup>st</sup> December, 2021, respectively, by Mathew I. Clarke, the applicant's director. In opposition to the application herein, the plaintiff/respondent filed a replying affidavit on 21<sup>st</sup> December, 2021.
  3. The application was canvassed by way of written submissions. The applicant's submissions and supplementary submissions were filed on 19<sup>th</sup> January, 2022 and 15<sup>th</sup> February, 2022, respectively, by the law firm of Gitau & Partners, Advocates whereas the respondent's submissions were filed by the law firm of Idris Ahmed & Company Advocates on 3<sup>rd</sup> February, 2022.
  4. Mr. Gitau, learned Counsel for the applicant stated that it is not denied by the parties that the applicant entered into an agreement for the sale and purchase of motor vehicle registration Nos. KBU 920N, KCG 905S and trailer ZE 3400. He stated that the dispute herein also involves motor vehicles that the applicant played a role in purchase which are in possession of the respondent herein, namely, motor vehicle registration Nos. KBV 126E and KBP 754Z, registered in the names of third parties who are not traceable by the applicant, who do not operate accounts with NTSA. He submitted that the sale and purchase herein occurred before 1<sup>st</sup> January, 2017 when there were changes altering the system of ownership and transfer of motor vehicles which required a process involving both the buyer and seller. He further submitted that in the year 2019, the applicant went back to the respondent with a request for the transfer of motor vehicles, and during the negotiations, all the motor vehicles in dispute were in the respondent's possession.
  5. In citing the case of *Kingston v Preston* [1773] 2 Doug KB 689, Mr. Gitau submitted that the principle of reciprocity in contracts recognizes the fact that in many contracts the common intention of the parties, as expressed, is that there should be an exchange of performance. He stated that the common intention is that neither of the parties should be entitled to enforce the contract unless they have performed or are ready to perform their own obligations. He asserted that the respondent herein ought to comply with the orders sought in order to claim enforcement. He contended that it is a mistake to assume that the terms of the parties provide all the answers since legal principles flowing from the law which govern the contract, such as reciprocity and statutory provisions can impact outcomes.
  6. He relied on the provisions of Sections 5A & 5B of the *Traffic Act*, Cap 403 Laws of Kenya and submitted that transfer of motor vehicles must happen under the National Transport and Safety (Transport Integrated Management System-NTSA) TIMS portal, and that the buyer and the seller must both create an account and be able to operate it in accordance with the established guidelines. He indicated that no specific account had been pointed out by the respondent that could be used by the applicant for transfer of the subject motor vehicles.



7. He stated that the response contained in the respondent's replying affidavit did not indicate whether the respondent operated an account with NTSA-TIMS under the name Ahmed Ali Twahir or Kilindini Royal Transport Services since in the documents supplied in the suit herein, the respondent uses the two names interchangeably, whereas he can only operate the account under one name for purposes of the envisaged transfers herein.
8. Mr. Gitau stated that there are guidelines for tape lifting in case of a forceful transfer or loss of a logbook. He further stated that in order for tape lifting to happen there must be access to the subject motor vehicles by the applicant. He submitted that it is a statutory requirement that a transferee should accept the transfer and pay the requisite registration fees. He submitted that the suit motor vehicles are still registered in the names of the applicant, thus in case of an accident, the applicant would be sued pursuant to the provisions of Section 8 of the Traffic Act. He also stated that the main gist of this case is for loss of use, hence there is a genuine suit if the claim was to materialize.
9. He submitted that Courts should be prepared to give at least some effect to expectations even if a party made promises which would constitute the greater interest of the parties in a transaction as is the case herein. He relied on the provisions of Sections 108 and 109 of the Evidence Act and submitted that the unchallenged depositions of facts in an affidavit are deemed admitted by the opposing party and such facts would require no further proof, and the Court is enjoined to accept, consider and act on them as correct, true and established.
10. Mr. Ahmed, learned Counsel for the respondent submitted that the provisions of the Civil Procedure Rules relied on by the applicant relate to the granting of temporary injunctions in a suit where the subject matter is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree and it is worthy of note that there is not a single prayer in the application for an injunction to stop the respondent from performing any action, as instead, the applicant seeks orders to have the respondent perform certain actions.
11. He contended that the parties herein decided to sell and buy four motor vehicles and one trailer but the logbooks to the said motor vehicle have been lost in the hands of the applicant. He submitted that the respondent has always requested for transfer of the subject motor vehicles but all it was getting were empty promises by the applicant. He stated that a copy of the respondent's functioning account is displayed in the respondent's affidavit for purposes of transfer of the motor vehicles in issue, if it was to be initiated by the applicant. He further stated that the respondent uses his trade name for purposes of supply of transport services and for ownership of motor vehicles he uses his personal details.
12. Mr. Ahmed relied on the provisions of Section 9 of the Traffic Act and submitted that this suit was primarily filed to assert the respondent's rights over the subject motor vehicles so that he can proceed to the NTSA and seek the registration of the transfer. He further submitted that the registered owner is legally required to initiate the process of transferring a motor vehicle in the NTSA system and thereafter, the purchaser can proceed to accept the transfer and pay the requisite fees.
13. He contended that when it comes to the tape lifting exercise, only the registered owner, in this case the applicant, can make a reservation in the NTSA system for the tape lifting to be done. He stated that the respondent has always been ready and willing to avail the motor vehicles in issue, as and when required.
14. It was submitted by Mr. Ahmed that the applicant has not provided any of the other requisite documents to facilitate a transfer of the subject motor vehicles or even issuance of duplicate registration certificates for the lost ones. He contended that in spite of the provisions of Section 8 of the Traffic Act, Courts have in numerous decisions held that despite a motor vehicle being registered in the name of one party, the liability lies with the beneficial owner as ownership has already been transferred and it is



only the formality of title transfer that is outstanding. To this end, he relied on the case of *Muhambi Koja Said v Mbwana Abdi* [2015] eKLR.

15. Mr. Ahmed contended that the applicant should have concluded the transfers with the third parties who are well known and if the applicant has lost the documents, it should come clean and approach the said third parties to have the vehicles transferred in their names. He submitted that the respondent had admitted in writing that it would avail the subject motor vehicles for inspection at NTSA since the said vehicles cannot operate without licenses for the motor vehicle inspection unit. Mr. Ahmed indicated that the prayers in the plaint would be partly granted by the hearing of the application herein. He further indicated that the vehicles have been parked since the year 2017 and that is the reason why change of user is pleaded.
16. In a rejoinder, Mr. Gitau submitted that among other provisions, the application herein has been brought under Sections 1A, 1B, 3A, & 63(e) of the *Civil Procedure Act* which set out the utility and need of the Oxygen Principle, the concept of justice as an overriding objective and the Court's inherent jurisdiction which is a residual intrinsic authority, which the Court may resort to in order to put right that which would otherwise be an injustice as is the case herein.
17. He further submitted that supplemental proceedings are initiated with a view of preventing the ends of justice from being defeated since they envisage that such a power must be specifically conferred upon the Courts which are required to be passed in the interest of justice irrespective of the fact as to whether the same would ultimately have any bearing with the reliefs claimed in the suit or not. He stated that the application herein bears the need and purpose of supplemental proceedings.
18. He submitted that in instances where there is loss of logbooks and forceful transfer of motor vehicles, the process is initiated by NTSA and the respondent only has to collect the documents from NTSA. He relied on the provisions of Section 9 of the *Traffic Act* and submitted that in forceful transfers, the buyer transfers without involving the seller. Mr. Gitau submitted that tape lifting is an independent process that requires an independent application to the CID department of Kenya Police for the confirmation of the chassis and engine number of a motor vehicle. He further submitted that pursuant to the provisions of Section 9(2) of the *Traffic Act*, the application for a duplicate logbook and forceful transfer requires the tape lifting to be submitted collectively with other documents.

#### **ANALYSIS AND DETERMINATION.**

19. I have considered the application filed herein, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying affidavit as well as the written submissions filed by Counsel for the parties. The issues that arise for determination are-
  - i. Whether the application herein has been brought under the correct provisions of the law; and
  - ii. If the application herein is merited.
20. The applicant deposed that it had done a search under the National Transport and Safety Authority (Transport Integrated Management System NTSA) TIMS using the KRA PIN number P051228896W given by the respondent and authenticated by KRA PIN checker and the results indicated that the Kilindini Royal Transport Services does not maintain an account under NTSA TIMS. The applicant averred that the respondent had failed to supply it with his NTSA-TIMS account. It was stated by the applicant that the orders sought by the respondent in the main suit include specific performance which entail the transfer of the subject motor vehicles and the trailer hence immediate transfer of the motor vehicles and the trailer would mitigate losses in line with the doctrine of mitigation of loss.



21. The respondent in his replying affidavit deposed that on diverse dates the applicant sold to him the subject motor vehicles on credit terms. That it was a term of the agreement that the respondent would take possession of the said motor vehicles and use them until he completed paying instalments for them, at which point the applicant was to transfer the certificates of registration into the respondent's name. He averred that he paid the full purchase price but the applicant had failed to transfer the said motor vehicles to him, to date. The respondent further averred that he and his Advocates on record had on numerous occasions notified the applicant of his willingness to conclude the transfers on NTSA-TIMS and demanded for it to be done but the applicant has always found excuses not to do so
22. It was stated by the respondent that the applicant has always been aware of his NTSA-TIMS particulars as he has had in his possession copies of the business certificate, the respondent's national ID as well as his KRA PIN certificates, thus failure to initiate the registration of the transfers in respect of the subject motor vehicles to the respondent is entirely the applicant's fault. He further stated that the subject motor vehicles are not the only vehicles he has purchased from the applicant since he had previously bought other trucks which the applicant duly transferred to him.
23. The respondent stated that two of the five motor vehicles subject to this suit have not yet been transferred to the applicant's name, as they are still registered in the name of the persons who sold them to the applicant, thus failure to transfer cannot be due to his fault. He averred that once the applicant has initiated the transfer in the system and provided him with a letter of indemnity to the NTSA together with the original logbooks, he should be able to proceed and finalize the rest of the processes on his own
24. It was stated by the respondent that the applicant has lost and/or hidden the original log books in respect of the suit motor vehicles. He contended that it is in his interest to have the subject motor vehicles transferred to his name so that he can utilize the same since the said motor vehicles have been grounded due to the applicant's breach of contract and continuous refusal to transfer them to him. In addition, the respondent stated that he has always been ready and willing to conclude the transfer process once the applicant initiates the same on the NTSA-TIMS portal, and provides him with a letter of indemnity and the original log books.
25. The applicant in its further affidavit deposed that it is appropriate to disregard the respondent's replying affidavit pursuant to the sham affidavit doctrine since it is a contradictory affidavit. It averred that the logbooks of all the subject motor vehicles are not available with either of the parties herein, which information was communicated to the respondent vide a letter dated 15<sup>th</sup> June, 2020, thus necessitating procurement of log books before effecting the transfer.
26. It further averred that the initial pre-conditions and prerequisites to enable transfer of the subject motor vehicles were set out in the letter dated 20<sup>th</sup> September, 2019, which requirements the respondent accepted through his Advocates' letter dated 20<sup>th</sup> September, 2019. The applicant contended that no supply of the user account under NTSA-TIMS system was supplied upon request by the applicant vide the letter dated 20<sup>th</sup> September, 2019.
27. It was stated by the applicant that the previous transfers referred to by the respondent are dated 22<sup>nd</sup> January, 2015 prior to the promulgation of the current digital NTSA-TIMS system in 2017, thus the same cannot be used to depict that the applicant has transacted with the respondent under NTSA-TIMS system. The applicant contended that motor vehicles registration numbers KBV 126E and KBP 754Z are registered to untraceable third parties thus necessitating forceful transfer in accordance with Section 9(2) of the *Traffic Act*. In addition, the applicant stated that the subject motor vehicles were procured and sourced by the respondent and the applicant's sole duty was to pay the purchase price. It



stated that the subject motor vehicles can be transferred to the respondent upon enabling tape lifting by the police.

28. The applicant deposed that pursuant to the NTSA-TIMS user guide manual, there can be no transfer of motor vehicles under circumstances of loss of logbook and where the registered motor vehicle owners are untraceable without police tape lift report/inspection report. He further deposed that the respondent in his plaint claims continued loss of use of the subject motor vehicles until the transfer of the said vehicles is effected, which necessarily motivates it to suppress any transfer of the subject motor vehicles so as to continue to gain unfairly.
29. The applicant in response to paragraph 17 of the respondent's replying affidavit averred that there is no letter of indemnity required under the NTSA-TIMS manual guide or statutory provisions.

Whether the application herein has been brought under the correct provisions of the law

30. The application herein has been brought under the provisions of Articles 40, 159 and 165(3)(a) of *the Constitution*, Sections 1A, 1B, 3A, 63(e) of the *Civil Procedure Act*, Order 40 Rules 1(ii) & 1(sic), 2 and 10, Order 51 Rule 1 of the Civil Procedure Rules and Sections 5A, 5B, 8 & 9 of the *Traffic Act*. The respondent contends that the provisions of Order 40 Rules 1, 2 & 10 of the Civil Procedure Rules under which the present application has been brought relates to the granting of temporary injunctions in a suit where the subject matter is in danger of being wasted, damaged or alienated by a party to the suit, or wrongfully sold in execution of a decree. He stated that in the application herein there is not a single prayer for an injunction to stop the respondent from performing any action as the applicant seeks orders to have the respondent perform certain actions.
31. The applicant on the other hand contends that among other provisions, the application herein has been brought under Sections 1A,1B,3A, & 63(e) of the *Civil Procedure Act* which set out the utility and need for the Oxygen Principle, the concept of justice as an overriding objective and the Court's inherent jurisdiction which is a residual intrinsic authority which the Court may resort to, in order to put right that which would otherwise be an injustice as is the case herein.
32. It is factual that Order 40 Rules 1 & 2 provides for interlocutory and/or interim temporary injunction, whereas Order 40 Rule 10 provides for orders for the detention, preservation, or inspection of any property which is the subject matter of such suit, authorization of any person to enter upon or into any land or building in the possession of any other party to such suit, and/or authorization of collection of any samples, any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information.
33. In the present application, the applicant does not seek any orders of temporary injunction but seeks orders to have the respondent perform certain actions and for the police to have reasonable access to the subject motor vehicles for purposes of tape-lifting. It is therefore this Court's finding that the application herein has not been completely brought under the wrong provisions of the law save for the provisions under Order 40 Rules 1 & 2 of the Civil Procedure Rules, 2010. This begs the question whether this is a fatal mistake and if so, what the consequences are.
34. The Court of Appeal in *Stephen Boro Gititha v Family Finance Building Society & 3 Others CA 363/2009*, held as hereunder on the overriding objective-

“The overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with it and whatever is in conflict with it must give way. If the often talked of backlog of cases is littered with similar matters, the challenge to the courts is to use the new “broom” of overriding objective to bring cases to finality, by declining to hear unnecessary



interlocutory applications and instead to adjudicate on the principal issues in a full hearing if possible.”

35. Courts are called upon to do substantive justice for the parties by giving effect to the overriding objective of Sections 1A and 1B of the *Civil Procedure Act* in the interpretation of its provisions and Rules which include; the just determination of the proceedings; efficient disposal of the dispute; efficient use of available judicial and administrative resources, and the timely disposal of the proceedings at a cost affordable to the respective parties.
36. It is the finding of this Court that regardless of the fact that the application herein has been brought under the provisions of Order 40 Rules 1 & 2 of the Civil Procedure Rules, 2010, among other provisions of the law, it affects the form and not the substance of the application, which issue is one of procedural technicality. Under the provisions of Article 159(2)(d) of *the Constitution* of Kenya, 2010, Courts are called upon to do substantive justice without paying due regard to procedural technicalities. It is therefore my finding that the error made by the applicant by partly citing the wrong provisions of the law is not fatal to the application as some of the other provisions relied upon are relevant to the present application.

**If the application herein is merited.**

37. Since the issues raised in the plaint herein are yet to be heard and determined on their merit, this Court shall not deal with details of the party that is to blame for the delay of the transfer of ownership of the suit motor vehicles, as it would amount to determining the entire suit without having heard witnesses of each party herein and having had the advantage of going through the evidence that shall be presented therein. It is however in the interest of justice and of the parties herein for the Court to determine this application. It is not disputed that the subject motor vehicles should be transferred to the respondent, what the parties herein cannot seem to agree on is the mode of transfer.
38. The prayers sought in the application herein reveal that the ultimate goal of the application and/or orders sought herein is to have the suit motor vehicles transferred to the respondent. It is not disputed that the respondent is in possession of motor vehicle registration Nos. KBU 920N, KCG 905S, trailer ZE 3400, KBV 126E, and KBP 754Z. It is also not disputed that motor vehicles registration Nos. KBV 126E and KBP 754Z are registered in the name of third parties who are not parties to the suit herein.
39. Motor vehicle registration Nos. KBU 920N, KCG 905S, and trailer ZE 3400 were sold by the applicant to the respondent. The applicant herein participated in the acquisition of motor vehicles registration Nos. KBV 126E, and KBP 754Z by the respondent. The applicant submitted that motor vehicles registration Nos. KBV 126E and KBP 754Z are registered in the name of third parties who are not traceable by the applicant and they do not operate accounts with NTSA, thus they have been unable to transfer the said motor vehicles to the respondent. The respondent on the other hand contended that the parties herein decided to sell and buy four motor vehicles and one trailer but the logbooks for the said motor vehicles have been lost in the hands of the applicant.
40. The process of computerized transfer of ownership and registration of new owners of motor vehicles is governed by the *Traffic Act*, Cap 403 Laws of Kenya. The provisions under Section 5A of the *Traffic Act* empower the National Transport and Safety Authority (NTSA) to establish the Transport Integrated Management Systems (TIMS) a platform where person(s) can be able to access services offered by NTSA. For the transfer of ownership of motor vehicle(s) registration, guidance is given by Section 5B of the *Traffic Act* which provides as hereunder-

“ 1) A person who wishes to be registered as a user of a computerized motor vehicle registration system may apply in writing to the Registrar who may-



- a. grant the application subject to such conditions as he may impose; or
  - b. reject the application.
- 2) A person shall not access, transmit to, or receive information from, a computerized motor vehicle registration system unless that person is a registered user of the system.”

41. It follows then that in order for any person to successfully transfer ownership of motor vehicles, the said person(s) must both create and/or maintain accounts under the said NTSA-TIMS portal. The applicant’s contention is that the respondent has not supplied it with details of an active account which he operates under the NTSA-TIMS portal as he provided details which the said portal does not recognize thereby making it impossible for the applicant to effect transfer of the suit motor vehicles to the respondent. The respondent’s case on the other hand is that the applicant has always been aware of his NTSA-TIMS particulars of the respondent as it has always had in its possession copies of the business certificate, the respondent’s national ID as well as his KRA PIN certificate.

42. It is not in contestation that all the log books of the subject motor vehicles are lost and/or misplaced. In order for the applicant to successfully transfer the said motor vehicles to the respondent, it will have to apply for duplicate log books from the NTSA. The applicant relied on Section 9 of the [Traffic Act](#) and stated that motor vehicles registration Nos. KBV 126E and KBP 754Z are registered in the names of third parties who cannot be traced. Section 9(2) of the [Traffic Act](#), Cap 403 Laws of Kenya provides as hereunder-

“Upon the transfer of ownership of a motor vehicle or trailer, the registered owner thereof shall, within seven days from the date of the transfer, inform the Registrar in the prescribed form of the sale or disposition, name, postal and email addresses and telephone number of the new owner, the mileage recorded on the mileage recorder (if any), of the motor vehicle, and such other particulars as may be prescribed, and shall deliver the registration book in respect of such vehicle to the Registrar together with the transfer fee, whereupon the vehicle shall be registered in the name of the new owner:

Provided that, where in any case the registered owner of a motor vehicle fails to comply with the provisions of this subsection, the Authority may, on being satisfied that the registered owner has died, left Kenya, cannot be traced, or has refused to comply with the provisions of this subsection, cause the vehicle to be registered in the name of the new owner on payment of the prescribed fee. (emphasis added).

43. In respect to motor vehicle registration Nos. KBV 126E and KBP 754Z, the applicant can apply to NTSA and have the said vehicles transferred to its name or the respondent’s name, pursuant to the provisions of Section 9(2) of the [Traffic Act](#). The NTSA-TIMS user manual outlines the processes to be followed in the event of an application for a duplicate logbook and also sets out the process to be followed in an application for alternative/forced transfer.

44. In the case of a duplicate logbook, the registered owner of the motor vehicle makes the application to NTSA via his/her NTSA-TIMS portal and uploads an affidavit, a tape lift report and a police abstract whereas in the case of an alternative/forced transfer, the applicant is required to make a request to NTSA in writing. The said letter must be accompanied by the original log book or police abstract and Form XI. In instances where the logbook is missing or lost, properly filled Form C, a tape lift report, sworn affidavit and copies of identity cards and PIN certificates for the new owner and the previous



owner must be provided and the new owner must have an NTSA-TIMS account. After the application has been launched, NTSA initiates the processing of the application.

45. From the above, it is evident that both applications for a duplicate logbook or alternative/forced transfer must be accompanied by a tape lift report. This means that tape lifting is not conducted by the NTSA but by the police from the Directorate of Criminal Investigations (DCI). I therefore agree with Mr. Gitau that one needs to make an independent application to the DCI for the confirmation of the chassis and engine numbers of a motor vehicle. I also agree with the said Counsel that for tape lifting to be done, there must be access to the subject motor vehicles by the applicant.
46. It is not contested that in transfer of ownership of motor vehicles, the registered owner should initiate the transfer in his/her NTSA - TIMS account and thereafter, the new owner accepts the transfer in his/her NTSA - TIMS account and pays the requisite registration fees.
47. Mr. Ahmed learned Counsel for the respondent submitted that the prayers in the plaint will be partly granted by the hearing of the application herein. He also stated that the motor vehicles in issue have been parked since the year 2017, and that is the reason why change of user is pleaded.
48. I am guided by the Court of Appeal decision in the case of Cassam v Sachania [1982] KLR 191 where the Court held as follows-

“.....An issue between the parties to an interlocutory application should not be decided at the application stage unless the material facts are capable of being fully established and the law is capable of being fully argued without the benefit of a trial.”

49. For the reasons explained in this ruling, it is imperative for mitigation of loss to be done without further delay. I am therefore satisfied that the application herein is merited and the same is allowed in the following terms-
  - a. That the plaintiff/respondent is hereby ordered to supply to the defendant/applicant a duly registered account under the National Transport and Safety Authority (Transport Integrated Management System) NTSA - TIMS Portal pending the hearing and determination of this suit;
  - b. That the respondent is hereby ordered to allow the police under the guidance of the applicant to have reasonable access to the motor vehicles registration numbers KBV 261E, KBP 754Z, KBU 920N, KCG 905S and trailer ZE 3400, for the purposes of tape lifting to establish the genuineness of the chassis and engine numbers of the said motor vehicles pending the hearing and determination of this suit;
  - c. That the respondent is hereby ordered to accept the transfer of the subject motor vehicles and trailers under NTSA-TIMS portal and pay the applicable transfer fees; and
  - d. The Costs of the application dated 6<sup>th</sup> December, 2021 shall be in the cause.

It is so ordered.

**DATED, SIGNED and DELIVERED at MALINDI on this 25 day of November, 2022. Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:**

Mr. Ahmed for the plaintiff/respondent



N/A for the defendant/applicant

Mr. Francis Bandika – Court Assistant.

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