



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 79 OF 2017

ROSEMARY WANJIKU KUNGU.....PLAINTIFF

VERSUS

PETER WILLIAM KINYANJUI.....DEFENDANT

AND

EFFORT MOVERS LIMITED.....1ST OBJECTOR

MARTIN NGUKU KARANJA/

T/A COUNTRY MUTHIGA INN.....2ND OBJECTOR

CHARLES NJOGU WANJEMA.....PROPOSED 1ST INTERESTED PARTY/APPLICANT

AND

LISBIN MAINA CHEGE.....PROPOSED INTEESTED PARTY/ APPLICANT

RULING

1. **Charles Njogu Wanjema**, the Proposed 1st Interested Party took out the Motion dated 18th June, 2021 whereof he sought for following orders inter alia: -

i) Charles Njogu Wanjema be enjoined as an Interested Party to this suit.

ii) To vary and or set aside the consent orders granted on 21st May, 2021 to the extent that the orders relate to Motor vehicle Registration No. KCA 605M.

iii) An order restoring possession and control of motor vehicle Registration No. KCA 605M to Charles Njogu Wanjema.

iv) Leave be granted to Charles Njogu Wanjema to respond to the objection proceedings.

2. The Proposed 1st Interested Party filed an affidavit he swore in support of the motion.

3. Effort Movers Ltd, the 1st Objector filed the replying affidavit sworn by Robert Karanja Ngunu to oppose the application.

4. Parties were invited to file written submissions.

5. I have considered the grounds stated on the face of the motion and the facts deponed in the rival affidavits plus the rival written submissions.

6. It is the submission of the applicant that he purchased Motor Vehicle Registration No. KCA 605M through a Public Auction conducted by Icon Auctioneers on 25th February, 2021 and that the same was transferred to him on 16th April, 2021.

7. The applicant claimed that he had no knowledge of the existence of the objection proceedings during the purchase or at the time of transfer

and only became aware at the time of seizure.

8. This court was beseeched to enjoin the applicant to these proceedings to enable him pursue his interests with respect to the above motor vehicle.

9. It was pointed out by the applicant that the sale of Motor vehicle registration No. KCA 605M was concluded before the objection proceedings were heard and determined.

10. This court was urged to make an order restoring the aforesaid motor vehicle to the applicant.

11. The 1st Objector strenuously opposed the proposed 1st Interested Party’s motion.

12. It argued that Icon Auctioneers on the instructions of the plaintiff wrongfully proclaimed its motor vehicles which included motor vehicle Registration No. KCA 605M in execution of a decree directed at one peter William Kinyanjui the defendant herein and who had no proprietary interest over the attached motor vehicle.

13. The Auctioneers are said to have seized the aforesaid motor vehicle on 2nd February, 2021 and the 1st Objector filed objection proceedings on 4th February, 2021 and served the auctioneer and the Plaintiff.

14. The 1st objector further stated that it obtained temporary orders for stay and sale on 11th March, 2021 and that the Plaintiff’s advocate who were present in court were made aware of issuance of the orders for stay of sale.

15. It is further pointed out that this court vide its ruling rendered on 21st May, 2021 issued orders lifting the attachment and for an unconditional order for the release of the motor vehicles.

16. It is also argued that the sale of the attached motor vehicle was done during the pendency of the objection proceedings, therefore no valid transfer of ownership could take place in the circumstances.

17. Having considered the rival submissions together with the material placed before this court, it is clear that the Proposed 1st Interested Party (the applicant) Purchased motor vehicle Registration No. KCA 605M in a public auction conducted by Icon Auctioneer’s during the pendency of the objection proceedings filed by the 1st Objector.

18. It is also apparent that this court had issued an order for stay of sale of the aforesaid motor vehicle on 11th March, 2021. The aforesaid motor vehicle was sold to the Applicant on 25th February, 2021 and transferred to him on 16th April, 2021. At the time of transfer there was an order for stay of sale which order was within the knowledge of the auctioneer and the Plaintiff and or her advocate.

19. With respect, I am in agreement with the 1st Objector that Motor Vehicle Registration No. KCA 605M was sold to the applicant in contravention of an order for stay order issued through objection proceedings.

20. In the circumstances, the sale is illegal and unlawful and therefore no lawful title can be passed to a purchase like the applicant.

21. The Applicant’s remedy lie against the plaintiff and the auctioneer for a refund through a fresh action and not through this suit.

22. In the end, I find no merit in the Proposed 1st Interested party’s Motion dated 18th June, 2021. The same is ordered dismissed with costs to the 1st Objector being borne by the Plaintiff.

DELIVERED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2021

.....

J. K. SERGON

JUDGE

In presence of

.....for the Plaintiff

.....for the Defendant

..... for the 1st Objector

..... for the 2nd Objector

..... for the Proposed Interested Party