



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 79 OF 2017

ROSEMARY WANJIKU KUNGU..... PLAINTIFF

VERSUS

PETER WILLIAM KINYANJUL.....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

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

RULING

1. **Lisbin Maina Chege**, the proposed 2nd Interested Party (applicant) took out the motion dated 24th June, 2021 whereof he sought for the following orders: -

i) THAT this Honorable Court be pleased to enjoin Lisbin Maina Chege as an interested party in these proceedings.

ii) THAT this Honorable Court be pleased to vary and/or set aside the orders granted on 21 May 2021 to the extent that the orders relate to motor vehicle registration number KCT 596W.

iii) THAT this Honorable Court be pleased to restore possession and control of motor vehicle registration number KCT 596W to Lisbin Maina Chege.

iv) THAT this Honorable Court be pleased to grant leave to Lisbin Maina Chege to file a response to the objection proceedings

v) THAT the Honourable Court be pleased to issue such further and/or alternative orders that may be appropriate in the interests of justice and the circumstances of this case.

vi) THAT the Applicant be awarded costs of this application,

2. The applicant filed an affidavit he swore in support of the motion. **Effort Movers Ltd.** - the 1st objector, filed the replying affidavit sworn by Robert Karanja Ngunu to oppose the motion.

3. Parties were invited to file written submissions.

4. I have also considered the written submissions plus the authorities cited.

5. The applicant averred that he purchased Motor Vehicle Registration No. KCT 596W in a Public auction conducted by Icon Auctioneers and that the motor vehicle was transferred to him on 23rd June, 2020. He further averred that he was not aware of the objection proceedings

and the existence of a temporary order for stay of execution and sale issued on 21st May, 2021. The applicant further averred that the aforesaid motor vehicle was seized and represented by Moran Auctioneers on 23rd June 2021 pursuant to the court order issued on 21st May, 2021.

6. The Applicant also argued that the 1st objector's remedy in the objection proceedings is overtaken by events.

7. For the above reasons, the applicant sought to be enjoined to this suit so that he can pursue his interests over Motor Vehicle Registration No. KCT 596W.

8. The 1st Objector urged this court to dismiss the applicant's motion arguing that the auctioneer proceeded to proclaim and attach the aforesaid motor vehicle yet the same did not belong to the defendant the judgment debtor.

9. The 1st Objector averred that it filed and served the objection proceedings upon the plaintiff and the auctioneer on 4th February, 2021 but still the auctioneer proceeded to seize his motor vehicle on 2nd March, 2021.

10. The 1st Objector further stated that it obtained a temporary order for stay of sale of the aforesaid motor vehicle on 11th March, 2021 and, therefore the sale conducted on 15th March, 2021 was illegal, unlawful and in violation of the stay orders issued on 11th March, 2021.

11. It is clear to this court that motor vehicle registration No. KCT 596W was unlawfully attached and sold in blatant violation of this court's order. The Plaintiff and the Auctioneer were made aware of the existence of the objection proceedings and the court order.

12. No proprietary interest over the aforesaid motor vehicle could be passed to the proposed 2nd interested party/applicant in the circumstances.

13. The applicant's remedy lie against the plaintiff and the auctioneer through a separate action and not through this suit.

14. In the end, I find no merit in the applicant's motion dated 24th June, 2021. The same is dismissed with costs 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