

REUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 564 OF 2017

JOSEPH MUNYI MUMU.....APPELLANT/APPLICANT

VERSUS

JOSEPH KIPLETING.....FIRST RESPONDENT

STANLEY KINYANJUI NJUGUNA.....SECOND RESPONDENT

RULING

There is a dispute herein involving motor vehicle registration No. KBX 772J said to be owned by the appellant herein but which the 2nd respondent is said to have sold to the 1st respondent. In a ruling delivered on 13th October, 2017 the lower court refused to restrain the respondents from interfering with the said motor vehicle and further ordered that the motor vehicle be released to the respondent.

The lower court ruling aggrieved the appellant who filed a memorandum of appeal on 18th October, 2017 that is five days after the said ruling. In that Memorandum of appeal he prays that the motor vehicle be returned to him as the lawful owner or that in the alternative, it be forwarded to the custody of the flying squad police unit at Kilimani Police Station pending the hearing of this appeal and a criminal case which he lodged against the 2nd respondent.

In the meantime he filed the present application to stay execution of the lower court order pending the hearing of the appeal. The application is supported by grounds set out on the face of the application alongside an affidavit sworn by the appellant. The application is opposed and there is on record two affidavits in reply sworn by both respondents. The parties have also filed written submissions which I have on record.

There is no doubt that the application was filed timeously but the appellant has to establish that he may suffer substantial loss if the orders he seeks are not granted and that the respondents should provide security for any decree that may be issued against them.

In the ruling dated 13th October, 2017 the trial court addressed several issues relating to the granting of injunctions. More importantly whether or not a mandatory injunction may be given on an interlocutory application as was sought by the appellant herein. In granting the order in favour of the 1st respondent herein who was the plaintiff in the lower court the court said as follows,

“Considering the above settled principles which bind this court, I find that since the plaintiff is an innocent purchaser for value he should not be made to suffer due to the mis-understanding between the 1st and 2nd defendants who appear to be principle and urgent. I find special grounds to warrant the grant of the mandatory orders for the release of the vehicle by the flying squad to the plaintiff pending the hearing and determination of the suit.”

Before reaching the said conclusion the trial court addressed the chronology of events leading to the possession of the motor vehicle in the hands of the 1st respondent herein. I have been guided by the authorities cited by counsel, the facts are set out and the relationships between the parties herein. I am persuaded that the trial court had reason to hold as it did that the 1st respondent should remain in possession of the said motor vehicle. Consequently, the application by the appellant herein is hereby dismissed with costs to the respondents.

Dated, signed and delivered at Nairobi this 28th Day of March, 2019.

A. MBOGHOLI MSAGHA

JUDGE