



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HIGH COURT CIVIL APPEAL NUMBER 169 OF 2019**

**DANIEL KURIA MUGO.....APPELLANT**

**VERSUS**

**SAMSON MUSYOKI KIVANGO.....1<sup>ST</sup> RESPONDENT**

**CATHERINE MUMBUA WAMBUA.....2<sup>ND</sup> RESPONDENT**

***(Being An appeal from the Order/ruling of the Chief Magistrate’s Court at Milimani Commercial Courts’, Nairobi (Hon. Ms L. Gicheha (CM) delivered on 22/3/2019 in CMCC no. 6993 of 2016)***

**R U L I N G**

The genesis of this dispute was a sale of two motor vehicles registration Nos. KCF 804D and KCH 185B by the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent. Following that sale, the parties appear to have fallen out and the 1<sup>st</sup> Respondent herein sued the 2<sup>nd</sup> Respondent in CMCC No. 6993 of 2016 at Milimani Commercial Courts Nairobi.

The 1<sup>st</sup> Respondent sought several orders the thrust of which was that he be declared the *bona fide* purchaser of the said motor vehicles, and that the 2<sup>nd</sup> Respondent be compelled to furnish him with all the necessary documents relating to the said motor vehicles including the transfer of ownership. The 1<sup>st</sup> Respondent is said to have paid the agreed purchase price which allegations were denied by the 2<sup>nd</sup> Respondent.

In the end however, the lower court in a judgment delivered on 6<sup>th</sup> July, 2018 found in favour of the 1<sup>st</sup> Respondent in all the prayers. After the said judgment, the 2<sup>nd</sup> Respondent sold motor vehicle registration No. KCH 185B to the appellant herein. The Appellant became aware of the judgment in the lower court and applied to be joined as an interested party to protect his interest.

In a ruling delivered on 22nd March, 2019 the appellant’s application was dismissed. He then filed this appeal. There is now an application before me by way of Notice of Motion dated 26<sup>th</sup> March, 2019 for an order that there be a stay of execution of the judgment delivered on 6<sup>th</sup> July, 2018 between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and also the order made on 18<sup>th</sup> February, 2019 which ordered that motor vehicle registration No. KCH 185B be transferred to the 1st Respondent, pending the hearing and determination of the appeal herein.

There is also a prayer that pending the hearing and determination of the appeal, the OCPD Langata Police Station be ordered to unconditionally release forthwith the said motor vehicle registration no. KCH 185B to the appellant.

In the grounds set out on the face of the application the appellant has given the chronology of events that took place in the acquisition of the said motor vehicle, the proceedings leading to the orders complained of, and pleads that his appeal has overwhelming chances of success. There is a supporting affidavit sworn by the appellant.

The application is opposed by the 1<sup>st</sup> Respondent and both parties have filed submissions. In refusing to enjoin the appellant as an interested party, the court referred to the judgment delivered on 6<sup>th</sup> July, 2018 and the orders made therein. In particular the magistrate said as follows:

***“Therefore by this judgment the said motor vehicle KCH 185B no longer belonged to the defendant (in this case the 2<sup>nd</sup> respondent) but now belonged to the plaintiff (in this case the 1<sup>st</sup> Respondent) the defendant did not appeal against this decision she only failed to comply with it and as a result the orders of 18/2/19 were issued to enforce. The interested party on the other hand has proven that he purchased the motor vehicle from the defendant at the sum of 2.5 Million which he paid and the vehicle was transferred to his name. .... There is a high probability he was not aware of the said judgment. The issue is that in this case two principles conflict. There is one protecting the integrity of the court order and secondly the rights of an honest purchaser.....the dignity repute and authority of the court must be protected. The issue is whether a person in disobedience of a court order can pass title. It is my humble opinion that a person cannot pass title in disobedience of a court order. The court order having declared the plaintiff as the owner of the motor vehicle all right the defendant had to the motor vehicle been taken away. I cannot ignore that the interested party may be an honest purchaser but I find whatever loss he had suffered can well be compensated by pursuing the defendant who illegally sold the motor vehicle to him.”***

I have related the above extract to the appellant’s application, the submissions and the authorities cited. Following the judgment of the lower court which found in favour of the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent lost all *bona fide* rights to the said motor vehicle. It was expected that she would transfer the motor vehicle to the 1<sup>st</sup> Respondent but instead sold it to the Appellant.

There is evidence that she did not appeal the said judgment yet went ahead to transfer the subject matter to the appellant. There was a caveat against the sale and registration of the motor vehicle which however, was removed in circumstances which are not clear. It is true that the appellant may qualify as an innocent purchaser for value, but if the title is tainted that alone may not validate the sale and the tainted title. The recognition of his right has been made by the magistrate in the ruling cited above. The ruling is clear that the motor vehicle, following the lower court judgment, remained the property of the 1<sup>st</sup> Respondent in the absence of any order to the contrary. The court observed, and I believe rightly so, that the appellant was an innocent purchaser, but whatever loss he has suffered can only be addressed to the 2<sup>nd</sup> Respondent. The intended appeal contained in the Memorandum of Appeal filed on 27<sup>th</sup> March, 2019 has very slim chances of success as against the 1<sup>st</sup> Respondent but the 2<sup>nd</sup> Respondent. If there is any fear of substantial loss, the advice given by the magistrate to the appellant should be sufficient recourse.

The foregoing being the case, the appellant's Notice of Motion cannot succeed. The same is hereby dismissed but each party shall bear their own costs.

**Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of June, 2019.**

**A. MBOGHOLI MSAGHA**

**JUDGE**