



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 474 OF 2017**

**UMATI KENYA LIMITED.....APPLICANT**

**VERSUS**

**TSUSHO CAPITAL KENYA LIMITED.....RESPONDENT**

**RULING**

1. The application dated 6<sup>th</sup> September, 2017 seeks orders that there be an order of stay of execution of the ruling delivered on the 25<sup>th</sup> August 2017 and the ensuing order pending the hearing and determination of the Appeal herein.

2. The application is based on the grounds stated therein and is supported by the affidavit of John Micheni Muthuro, the Applicant's Managing Director. The Applicant's claim arises from a Hire Purchase agreement of Motor Vehicle Registration KBW 510R make Toyota Prado. The Applicant received a notice from the Respondent of the intention to repossess the motor vehicle for non-payment of monthly installments. The Applicant then filed suit in the Lower Court and made an application seeking injunctive orders to restrain the Respondent from repossessing and auctioneering the motor vehicle. The Lower Court dismissed the application. The Applicant was aggrieved by the said dismissal and filed the appeal herein. The Applicant's complaint is that it had paid three quarters of the purchase price which amounted to Ksh.5,103,144 yet the motor vehicle was repossessed without any security. It is further stated that the motor vehicle is exposed to depreciation and may cease to exist by the time the suit is determined. That consequently, the Applicant stands to suffer substantial loss.

3. The application is opposed. The Respondent filed the grounds of opposition dated 12<sup>th</sup> September, 2017 and a replying affidavit. It is stated that the Applicant breached its contractual obligation by defaulting in the payment of the monthly installments. That the application is bad in law and the court has no jurisdiction to grant the reliefs sought. That the motor vehicle has already been repossessed and no substantial loss will be suffered. That since no security has been offered, the motor vehicle is the Respondent's security.

4. The application was canvassed by way of written submissions. I have considered the said submissions.

5. The Applicant's application is for stay of execution of the Lower Court ruling. Although the Lower Court ruling has not been exhibited herein, it is clear from the annexed application dated 2<sup>nd</sup> May, 2017 which was filed in CMCC Nbi Milimani Commercial Courts No. 2919/2017 that the Applicant sought orders of injunction to restrain the Respondent from, *inter alia*, repossessing and auctioning the motor vehicle. The said application was dismissed. This court cannot therefore stay that which is in the negative. There is nothing to be stayed in the circumstances of this case.

6. With the foregoing, I find the application is bad in law and dismiss the same with costs to the Respondent.

Date, signed and delivered at Nairobi this 15<sup>th</sup> day of March, 2018

**B. THURANIRA JADEN**

**JUDGE**