



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CIVIL APPEAL NO. 75 OF 2017**

**CORAM: D.S. MAJANJA J.**

**BETWEEN**

**REUBEN MONG'ARE KABA.....APPELLANT**

**AND**

***M M N minor suing through her mother***

***and next friend R M.....1<sup>ST</sup> RESPONDENT***

**VICTORINAH KEMUNTO MAKORI...2<sup>ND</sup> RESPONDENT**

***(Being an appeal arising from the Judgment and Decree of Hon. E.A Obina SRM***

***dated 17<sup>th</sup> November 2017 at the Chief Magistrate's Court***

***in Kisii CMCC No. 57 of 2015)***

**JUDGMENT**

1. This appeal is from the dismissal of the appellant's application objecting to the attachment and sale of motor vehicle Registration Number XXXX, Mitsubishi Fuso ("the vehicle"). The application was made under **Order 22 rule 51** of the **Civil Procedure Rules**.
2. The appellant, who was the objector, based his claim on the ground that he purchased the motor vehicle from the 2<sup>nd</sup> respondent, who was the judgment debtor. She had taken a loan through Equity Bank Mumias Branch to purchase the motor vehicle and then sold it to the appellant. The sale was evidenced by the two agreements dated 14<sup>th</sup> and 16<sup>th</sup> December 2015 respectively. She further deposed that she was paying the monthly instalments into the loan account from the time she purchased the vehicle.
3. In response to the application, the 1<sup>st</sup> respondent, who was the decree holder/judgment creditor annexed a copy of records which showed that as at 6<sup>th</sup> October 2017, the motor vehicle was registered in the joint names of Equity Bank and the judgment debtor. The judgment creditor argued that under **section 8** of the **Traffic Act (Cap 403 of the Laws of Kenya)** the vehicle belonged to the judgment debtor and not the objector.
4. The trial magistrate considered the material before him and concluded that the appellant had not made out a case and as a result, dismissed the objection, precipitating this appeal.
5. What I am required to determine in this appeal is whether the judgment debtor proved its case that it was the owner of the vehicle. In doing so, I am cognisant of the principle that I am entitled to review the entire evidence and reach my own independent conclusion. The question for determination is whether, on the evidence, the appellant proved that she had a legal or equitable interest in the property.
6. Having reviewed the evidence, I find that the motor vehicle was owned and registered in the joint names of Equity Bank (Kenya) Limited and the 2<sup>nd</sup> respondent. While it is true that **section 8** of the **Traffic Act** is a rebuttable presumption of ownership, I do not think the appellant could acquire an interest in the vehicle without the consent of the owners. It is evident from the agreements dated 14<sup>th</sup> and 16<sup>th</sup> December 2015, Equity Bank (Kenya) Limited was not a party yet it was a co-owner whose consent was necessary to transfer or acquire ownership. I

therefore find and hold that the appellant could not acquire a legal or equitable interest in the motor vehicle without the consent of the co-owner.

7. For the reasons I have stated, I dismiss the appeal with costs of Kshs. 20,000/- only to be paid by the appellant.

**DATED and DELIVERED at KISII this 7<sup>th</sup> day of August 2018.**

**D.S. MAJANJA**

**JUDGE**

**Mr Gichana instructed by** Bosire Gichana and Company Advocates for the appellant.

Mr Gichana instructed by Ben K. Gichana and Company Advocates for the appellant.