

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC CIVIL APPLICATION NO. 119 OF 2018

ELIJAH WAWERU MUKARIA.....APPLICANT

-V-

CENTENARY SACCO SOCIETY LTD.....1ST RESPONDENT

GEORGE GITONGA MUNGANIA.....2ND RESPONDENT

R U L I N G

1. Before me is a Motion on Notice dated 27th August, 2018 brought pursuant to *sections 3, 3A, 63 (e) of the Civil Procedure Act CAP 21 of the Laws of Kenya and Article 159 (2) (d) of the Constitution and all enabling provisions of the Law*. In it, the applicant has sought an order for the release of motor vehicle registration number KAS 038J packed at Meru Police Station and a direction as to whether **Meru CMCC NO. 147 of 2008** be heard in the same court or it be transferred to the Co-operative Tribunal for hearing and determination.

2. The application is based on the grounds on the face of the Motion and an affidavit of Elijah Waweru Mukaria sworn on 27th August, 2018. He deposed, inter alia, that he was the plaintiff in the **Meru CMCC NO. 147 of 2018** wherein he was seeking the release of motor vehicle registration number KAS 038J pending the hearing of the main case. That respondents filed an objection to the jurisdiction of that court and that this in turn had necessitated the filing of this application as the issue of jurisdiction was weighty.

3. The application was opposed via replying affidavits filed by the 1st and 2nd respondents on 11th September, 2018. It was deposed, that the application was a total abuse of the judicial process; it was not possible to discern whether the application was an anticipatory appeal or whether the court was being asked to confer jurisdiction on the Chief Magistrate's Court to hear matters reserved for the Cooperative Tribunal. That there was a parallel suit being Meru CMCC NO. 147 of 2018, in which the subject matter and the parties were similar and the matters in issue the same. That the application therefore was in breach of **Section 6 of the Civil Procedure Act**.

4. I have carefully considered the application and the rival contentions by the parties. It is not in dispute that there is pending **Meru CMCC NO. 147 of 2018**. In that suit, there is pending an application dated 17th August 2018 wherein the applicant seeks orders that are similar to those he is seeking in the present application. It is also not disputed that the respondents have raised a preliminary objection challenging the jurisdiction of that court to hear the matter and a ruling is to be delivered on 10th October, 2018.

5. It would seem that what the applicant is asking the court to do is to pre-empt the decision of the lower court in the said **Meru CMCC NO. 147 of 2018**. That would not be proper. The proper procedure will be to let that court deliver itself on the issue before it, whereafter its decision can be referred to this court.

6. Counsel for the applicant submitted that the applicant came to this court to seek clarification on the matter of jurisdiction. That may be so, but this court cannot act in breach of a clear provision of the law, **Section 6 of the Civil Procedure Act**. Since a court is already seized of the matter, no other court can purport to take it over and rule on it.

7. There were issues that were raised regarding the efficacy of the respondent seeking to realize its security for a loan advanced to the applicant by repossessing the subject vehicle yet there are guarantees in force. This court rejects the invitation to address that issue as doing so would be delving into the merits of the dispute that is pending before the lower court.

8. In view of the foregoing, I hold that the application is premature, devoid of merit and is hereby struck out with costs to the respondents.

DATED and DELIVERED at Meru this 26th day of September, 2018.

A. MABEYA

JUDGE