



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO 367 OF 2016

HAKIZIMANA ABDOUL ABDULKARIM.....PETITIONER

VERSUS

ARROW MOTORS GROUP (E.A) LTD.....1ST RESPONDENT

AAKIF VERANI.....2ND RESPONDENT

RULING

1. The Petitioner has sued the 1st respondent garage and its director as the 2nd respondent for relief by way of final orders relating to a motor vehicle owned by him and taken to the garage for repairs including a declaration for breach of consumer rights and damages as follows:

“PETITIONERS PRAYERS SOUGHT DATED 1ST SEPTEMBER, 2016

19. *A declaratory order against the respondents that the petitioner’s Consumer Rights under section 5, 6, 7, 12, 13, 15, 44, 16, 47, 49, 50, 51 and 52 of the Consumer Protection Act 2012 were infringed, having brought in the vehicle in a good condition just for service.*

20. *An order for compensation and/ or general damages.*

21. *Specific damages of;*

i. Amount paid to respondents	USD 4,600.00
ii. Air ticket + accommodation for	USD 800.00
iii Air ticket accommodation (petitioner)	USD 2,400.00
iv Towing charges Kigali to Nairobi	<u>USD 1,400.00</u>

TOTAL	USD 9,200.00
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22. *Any other orders that this Honourable court shall deem fit.*

23. *Costs of the petition be borne by the respondents.*”

2. By a Notice of Motion dated 17th October 2016 the Petitioner seeks the following interlocutory relief orders:

“NOTICE OF MOTION DATED 17TH OCTOBER 2016 ORDERS THAT;

1. That this Honourable Court be pleased to certify the instant application as urgent and the same do proceed ex parte in the first instance.

2. That the Honourable court be pleased to order the respondents to immediately release the motor vehicle registration no 105UN 890K immediately to the applicant pending the hearing and determination of the petition.

3. That this Honourable Court be pleased to issue any other orders it may deem fit.”

3. The application is based upon grounds set out in the Notice of Motion as follows:

“Grounds that:

i. That the applicant took his vehicle in good condition to the respondents for general service on or around July 2015.

ii. That after the applicant went to pick up the said vehicle it had mechanical issues.

iii. That a day later the vehicle could not move at all due to those mechanical issues.

iv. That the applicant at his own cost towed the said vehicle to the respondents garage so that they can honour the warranty and repairs the vehicle.

v. That it has now been over 12 months and the vehicles has not been repaired.

vi. That the respondents have been sending the petitioner random charges unrelated to the repair.

vii. That the applicant on the 9th August 2016 sent a demand letter to the respondents regarding the said vehicle through their advocates.

viii. That on the 11th day of august 2016 @12.53p.m the 2nd respondent sent an email to the applicant threatening to move/auction the said vehicle to a third party.

ix. That the petitioner/applicant herein stands to lose immensely if the respondents are allowed to proceed with their intended action.

x. The Honourable court has powers and jurisdiction to grant the orders sought.”

4. The petitioner has set out his case at paragraphs 2-11 of the Supporting Affidavit as follows:

“SUPPORTING AFFIDAVIT OF HAKIZIMANA ABDOUL ABDULKARIM DATED 17TH OCTOBER 2016

2. That during the month of July 2015 I took my vehicle for general service at the respondents premises on Mombasa road, Nairobi.

3. That when I went to pick up my vehicle after service the car had mechanical issues

including lose of power which problem was brought to the Respondent's attention.

4. That the respondents advised me that it was usual for such vehicles to lose power after service and that the said vehicle was okey and that after a few days use it shall go back to normal.

5. That based on the respondents advice I drove the said vehicle to Kigali on reaching there the vehicle completely broke down.

6. That after I communicated to the respondents from Kigali about the situation, respondents sent in their mechanic at my costs of US Dollars 700 being the cost of the Air Ticket plus accommodation but the respondents mechanic could not repair it.

7. That the respondents advised me that they can only repair the vehicle if it was brought to their garage in Nairobi which I t a costs of US Dollars 1400/- towed the said vehicle to your garage around the month of December 2015.

8. That after the said vehicle arrived at the respondent's garage on Mombasa road in Nairobi they demanded US dollars 4600/- from me in order to fix the said vehicle without providing an invoice or estimates.

9. That I had to fly from Kigali in January, April and June 2016 at a cost of US dollars 800 per trip only to find out that no repairs have been done to the said vehicle.

10. That since the vehicle broke down in August 2015 my family has had to use a rental vehicle at a cost of US dollars 1500 per month.

11. That I hold the respondents whole and solely responsible for my vehicle breaking down since I had used he said newly imported vehicle for almost one year without any problems whatsoever until the vehicle was brought to the respondents premises for general service."

5. When the matter came up for hearing on the 9th November 2016 an order by consent of the parties was recorded as follows:

"By Consent:

1. Notice of Motion dated 1/9/16 is withdrawn with no order as to costs.

2. Notice of Motion dated 17/10/16 to proceed to hearing on the basis of written submissions each party taking 7 days.

3. Respondent to file replying Affidavit today and the Petitioner to file further affidavit within 7 days.

4. Ruling reserved for 7/12/2016."

6. Despite the Consent Order, it appears that the respondent did not file a replying Affidavit or grounds of opposition to the Notice of Motion as agreed.

7. The Notice of Motion of 17th October 2016 seeks interlocutory mandatory injunction order whose principles for grant are well known – that while *interlocutory* mandatory injunctions may be granted in exceptional cases, an applicant must demonstrate a clear case for the grant of the relief sought. See *Kamau Muchuha v. Ripples Ltd*, [2001] eKLR.

8. While the Respondent has not filed a replying Affidavit, it appears from correspondence between it and

the Counsel for the petitioner by emails of 11th August 2016 following a Demand Letter of 8th August 2016 that a counter-claim for charges including storage costs was contemplated by the Respondent in anticipation of the suit. In these circumstances, it is impossible to find that the Petitioner has a clear right to ownership and possession of the motor vehicle the subject of the suit free from any lien for storage and other charges. It is in the interests of both parties to avoid waste to the motor vehicle and escalating costs on account of long detention thereof while the matter remains unresolved.

9. In these circumstances, the course that commends itself to the court is an order for the expedited hearing of the Petition to determine the fate of the motor vehicle and the related claims by the parties.

ORDERS

10. For the reasons set out above, the Court declines the Notice of Motion dated 17th October 2016 and makes an order for the hearing of the main petition on priority basis.

11. Costs shall be in the Cause.

EDWARD M. MURIITHI

JUDGE

DATED AND DELIVERED THIS 30TH DAY OF DECEMBER 2016.

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JUDGE

Appearances:

M/S Nyareru Bosire & Co. Advocates for petitioners

M/S Walker Kontos Advocates for the 1st Respondent