



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 372 OF 2014

GUACA STATIONERS LIMITED

GUACA CONVERTERS & STATIONERS LIMITED.....APPELLANTS

VERSUS

INAMDAR & INAMDAR.....RESPONDENT

RULING

1. The appellants herein filed a notice of motion dated 11th September, 2014 seeking the following orders that:-
 - i. *Pending the hearing and determination of the Appeal this court be pleased to order stay to order stay of further execution of the decree in Nairobi CMCC No. 6895 of 2012 Inamdar & Inamdar Advocates v. Guaca Stationers Limited & Another and in particular the sale of motor vehicle registration number KBF 417 D.*
 - ii. *Pending the hearing and determination of the Appeal this court be pleased to order that the motor vehicle registration number KBF 417 D ('subject vehicle') be returned forthwith to the Appellants.*
2. On 13th February, 2015 this court granted the said orders. The Appellant has now filed a notice of motion dated 7th April, 2015 seeking a review of the said order to include motor vehicle registration number KBW 699W. By the supporting affidavit of Chetan Shah, the reasons advanced in support of the prayer, was that at the time of filing of the motion dated 11th September, 2014, motor vehicle registration number KBW 699W was inadvertently not stated but that it was mentioned that there was a second vehicle that had been attached.
3. In opposition to the application the Respondents filed grounds of opposition. The grounds were that this application is scandalous, frivolous and an abuse of the process of court and should be dismissed with costs to the Respondent, that this court does not have jurisdiction to entertain, hear and determine this application and that the application does not satisfy the conditions for a review under the Civil Procedure Rules, 2010.
4. At the hearing of the application, Mr. Rimui learned counsel for the Appellant sought to rely on the grounds on the body of the application and the supporting affidavit therein while there was no appearance for the Respondent.
5. The Respondent merely raised issues of law in the grounds of opposition but did not on oath, respond to the facts in the supporting affidavit. For example as to whether it was true or not that they had attached motor vehicle registration number KBW 699W. The failure to file a replying affidavit to contest that assertion amounts to an admission of those facts on the Applicant's application. See the case of **Kennedy Otieno Odiyo & 12 Others Vs Kenya Electricity**

Generagting Company Limited [2010] eKLR wherein the court held:-

“The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the application in its supporting affidavit. Thus what was deponed to was not entered nor rebutted by the Respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant’s supporting affidavit, means that the respondents have no claim against the applicant.

In this regard, the court held in Kipyator Nicholas Kiprono Biwott Vs George Mbuguss and Kalamka Ltd Civil Case No. 2143 of 1999

..... From the facts and the law I have analyzed in this case, I do find the Defendants have no defence to this suit..... having filed no replying affidavit to rebut the averments in the plaintiffs affidavit in support of the application. I, therefore have no alternative but to strike out paragraphs 3, 4, 5, 6 and 10 of the defence and enter judgment for the plaintiffs on liability....”

6. In view of the aforesaid I find merit in the Appellants' application and allow it. Costs shall await the outcome of the appeal.

Dated, Signed and Delivered in open court this 15th day of May, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent