

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 155 OF 2012

(Being an appeal from the Ruling of Senior Resident Magistrate's Court at Mombasa E. Michieka, SRM dated 28th August, 2012 in Mombasa CMCC No. 671 of 2012)

GUARDFORCE SECURITY (K) LTD APPELLANT

V E R S U S

JOHN OMOLLO T/A JOFAH GROUP OF COMPANIES RESPONDENT

RULING

1. What the Respondent seeks from this Court by his Notice of Motion dated 27th June, 2014 is not clear at all. By that Notice of Motion Respondent seeks the following prayers-
 - **THAT the motor vehicle KAX 156B, currently at Bamburi Police Station in Mombasa, within the jurisdiction of this Court to continue being detained at Bamburi Police Station pending the hearing and determination of this application.**
 - **THAT the Appeal admitted on 18th September 2012 and all other consequential orders obtained herein be reviewed and or set aside.**
 - **THAT the Appellant's proprietor, his Advocate on record in this matter and the proprietor of MURPHY MERCHANTS AUCTIONEERS be summoned to appear before this Honourable Court and explain their roles if any and/or the circumstances under which the Motor Vehicle KAX 156B was sold and ownership transferred to its current owner without the knowledge of the Court and the Applicant and yet it is still subject matter of an appeal by the Respondent, pending hearing and determination.**
2. The background information I have gathered from reading the previous withdrawn Notice of Motion dated 5th April 2013 and the affidavit in support of the Notice of Motion under consideration is that the Respondent in this Appeal was sued in Chief Magistrate's Court under Civil Case No. 671 of 2012 for a debt. Respondent paid the decretal sum and the Appellant's costs. Notwithstanding that payment Appellant attached Respondent's motor vehicle Registration No. KAX 156B. Respondent obtained an order in the Chief Magistrate's Court for the release of that vehicle to him. Appellant by a Ruling of 13th November 2012 of the Chief Magistrate's Court obtained an order of stay of the release of motor vehicle pending the hearing and determination of this appeal. That stay of release of the motor vehicle pending the determination of this appeal subsists to date and as can be seen from the prayers reproduced above Respondent has not sought the setting aside of that stay.
3. It does seem from the Respondents affidavit and the affidavit of Evans Maabi T/A Murphy Merchants Auctioneers that the subject motor vehicle was sold by Beem Agencies, who were storing it, for purpose of defraying storage charges.
4. Even though it is alleged that the motor vehicle was sold to a third party the copy of Records from the Registrar of Motor Vehicles dated 30th June 2014 shows that there has not been any change of

ownership. The vehicle is still registered in the name of the Respondent.

5. Further Respondent through the assistance of Bamburi Police Station obtained possession of the motor vehicle which to date is lying at the Bamburi Police Station. According to the Respondent's depositions that there was unauthorized release of the motor vehicle to a Third Party is subject of Police investigation.
6. The stay of execution that Appellant obtained from the Chief Magistrate's Court was to the effect that said Appellant was to continue holding the subject motor vehicle pending determination of this Appeal. By the admission of the Auctioneer who had the custody of the motor vehicle on behalf of Appellant, the Auctioneer admits to have lost custody of vehicle to a Third Party. It would therefore seem that there is no need of maintaining the stay order so far as it relates to the subject motor vehicle. As stated before that motor vehicle is still registered in the name of the Respondent. Accordingly considering the totality of the matter before me I find that the interest of justice would best be served by ordering the motor vehicle be released to Respondent. If the Police are investigating the circumstances under which the Auctioneer released the vehicle to a Third Party this Court will then decline to order the proprietor of Murphy Merchants Auctioneer to appear in Court as prayed by Respondent. I therefore grant the following orders-
 - a. **The motor vehicle Registration No. KAX 156B be immediately released to John Omollo.**
 - b. **There shall be no orders as to costs of the Notice of Motion dated 27th June, 2014.**

DATED and DELIVERED at MOMBASA this 31ST day of JULY, 2014.

MARY KASANGO

JUDGE