



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 232 OF 2014

MAURICE OMUSEE BUSURU.....PLAINTIFF

- VERSUS -

CRISSAM ACRES LIMITED.....1st DEFENDANT

CFC STANBIC BANK LIMITED2nd DEFENDANT

R U L I N G

1. The application before the court is a Notice of Motion dated 3rd May 2014 but filed in court on 3rd June 2014. The application seeks the following surviving Orders:
 - a. *That pending the hearing and determination of this suit this honourable court be inclined to grant a temporary injunction restraining the defendants whether by themselves or their directors, agents, employees or any person whatsoever acting under its instructions from selling motor vehicle registration number KBN 808 A or interfering in any way with the applicant's ownership of the said motor vehicle.*
 - b. *That this honourable court be inclined to grant an order directing the 2nd defendant to release motor vehicle registration number KBN 808 A back to the care and control of the plaintiff.*
 - c. *That the honourable court do grant an order allowing the plaintiff to continue making payments for the said motor vehicle till December 2014 as per the agreement.*
 - d. *That costs be provided for.*
2. The application is premised on the grounds stated therein and is supported by Affidavit of **MAURICE OMUSEE BURUSU** dated 3rd May 2014 and his Further Affidavit dated 3rd July 2014.
3. The application is opposed by both Respondents. **CHRISTINE MUTILE MWANGI** has sworn a Replying Affidavit on behalf of the 1st Defendant/Respondent opposing the application. The Affidavit is dated 17th June 2014. For the 2nd Defendant/Respondent **BONIFACE MACHUKI** has sworn a Replying Affidavit dated 12th June 2014 opposing the application.
4. There is a conflict in the genesis of the application and suit herein, as both parties have taken a

different position. However, my understanding of the issue is that the Plaintiff and the 1st Defendant were in some kind of business relationship pursuant to which the 1st Defendant agreed to handover the suit motor vehicle registration number **KBN 808 A** to the Plaintiff. That motor vehicle was bought by the 1st Defendant under a hire purchase agreement financed by the 2nd Defendant. It was then subsequently registered in the names of both the Defendants as purchaser and financier respectively. Through a mutual arrangement between the Plaintiff and the 1st Defendant, the suit motor vehicle was given to the Plaintiff to use in the 1st Defendant's business, but the Plaintiff had to pay the finances towards the purchase of the suit motor vehicle. As to who are the owners of the said motor vehicle there is no doubt as the annexed log book marked **"CMM9"** to the Replying Affidavit of **CHRISTINE MUTILE MWANGI** shows that the motor vehicle is owned by the 1st and 2nd Defendants. However, the Plaintiff claims that it is him who paid the deposit of **Kshs.486,680/=** on 10th November 2010, and it is him who has been paying the monthly instalment and that indeed the outstanding balance is only **Ksh.617490/=** which is due to be cleared in December 2014 and which he is willing to continue paying so that the suit motor vehicle is not sold in an auction.

5. It is instructive to note that the 2nd Defendant supports the view that the suit motor vehicle belongs to the 1st Defendant and that as far as they are concerned it is the 1st Defendant that entered into a Hire Purchase Agreement with them, and not the Plaintiff. The 1st Defendant's story is rather curious. While the 1st Defendant admits that the Plaintiff was in a business relationship with the 1st Defendant, the 1st Defendant insist that the monthly instalment paid by the Plaintiff were monies given to the Plaintiff by the 1st Defendant to pay to the 2nd Defendant, except a sum of Ksh.55,000/= paid by the Plaintiff around 28th May 2014. This reasoning is curious in the sense that it is difficult to understand why the 1st Defendant would give money, on a monthly basis, to the Plaintiff, for the Plaintiff to pay on the behalf of the 1st Defendant. Why couldn't the 1st Defendant make direct payments to the 2nd Defendant, which in any event, they were in contractual relationship with?
6. Another curious action by the 1st Defendant is their letter dated 28th May 2014 in which they informed the bank that;

"We wish to inform you that due to unavoidable circumstances, we are unable to continue servicing the loan and would therefore wish to surrender the vehicle back to you with immediate effect, kindly take necessary action".

It is evident that the above letter was meant to self-serve the 1st Defendant. Obviously, the vehicle at that time was with the Plaintiff, and it was taken from the Plaintiff by auctioneers. The 1st Defendant did not surrender the said vehicle simply because it was not in their possession.

7. The above scenario only points to differences between the Plaintiff and the 1st Defendant. It is clear that the 1st Defendant was using the 2nd Defendant to help solve issues between it and the Plaintiff. In this regard, the court has seen a smoke. Where there is smoke, there is fire. So, where is the fire here? The fire, I believe, is in what the Plaintiff states that he has a huge interest in the suit motor vehicle. The Plaintiff's case is hugely believable, to the extent that the Plaintiff could not have been in possession of the suit motor vehicle without a mutual arrangement between the Plaintiff and the 1st Defendant. It is clear that arrangement proved to be sour in the course of the time, leading to the 1st Defendant writing to the bank to repossess the suit motor vehicle. The contractual documentation herein favours the 1st and 2nd Defendants. However, this court is not hoodwinked. This court is satisfied that the Plaintiff has a sufficient interest in the suit motor vehicle to enable him want to continue payment of the instalments. The Plaintiff has also stated that if allowed, he will continue payment by instalments as he had been doing and that by this act, the interest of the 2nd Defendant is assured. The 2nd Defendant's interest is that the Hire Purchase

loan be repaid, and the Plaintiff is ready to do that.

8. In light of the foregoing, there is only one issue for this court to determine at this stage. That issue is whether or not the Plaintiff has established a sufficient interest in the suit motor vehicle to enable this court preserve the same pending the hearing and the determination of this suit. Pursuant to the foregoing, the answer to above question is in the affirmative.
9. In the upshot, I make Orders as follows:-
 - a. ***Pending the hearing and determination of this suit as to ownership of the suit motor vehicle registration No. KBN 808 A the said motor vehicle registration No. KBN 808 A shall immediately be released into the custody and control of the Plaintiff.***
 - b. ***The Plaintiff shall continue to make payments for the said motor vehicle registration Number KBN 808 A to the 2nd Defendant, and shall keep all records of payments which shall be availed to this court during the hearing.***
 - c. ***The 1st Defendant has already surrendered the suit motor vehicle to the 2nd Defendant on account that the 1st Defendant cannot repay the loan. I therefore direct the 1st Defendant to make available records of its previous repayment in regard to the said motor vehicle in readiness for inter-parties hearing.***
 - d. ***Costs shall be in the cause.***

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 17TH DAY OF OCTOBER 2014

E.K.O OGOLA

JUDGE

PRESENT:

Odhambo holding brief for Onguto for the Plaintiff

E.L. Lubulela for the 1st Defendant

M/s Nyamute holding brief for Kabaiku for the 2nd Defendant

Irene – Court Clerk