



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 56 OF 2013

JOSHUA KIVUVA MUTUKU PLAINTIFF/APPLICANT

VERSUS

1. **PHILIP MWANZA KANYOTU**
2. **KITONGA MWANDUKA**
3. **WILLY MULI**
4. **SCOLA MUKAI JOHN**
5. **JOSEPHINE SOPHIA MWANDUKA**
6. **MAYANTHI MUTUA DEFENDANTS/RESPONDENTS**

R U L I N G

1. The application dated 24/10/2013 presently seeks orders that:-
 1. **(Spent).**
 2. **(Spent).**
 3. **THAT, pending the hearing and determination of this suit an order do issue restraining the Defendants by themselves, their agents, employees or servants and/or persons acting under their authority from selling, alienating, transferring and/or in any other manner dealing with the Plaintiff's possession and ownership of motor vehicle KBK 218C.**
 4. **THAT, the suit motor vehicle KBK 218C be unconditionally released to the Plaintiff.**
 5. **THAT, costs of this application be provided for.**
2. The Applicant's case according to the affidavit in support and the further affidavit is that the Applicant purchased the motor vehicle the subject of this suit from the 1st Respondent, **Philip Mwanza Kanyotu**. The motor vehicle was thereafter proclaimed in execution of a decree in **PMCC Kitui 294 of 2010** and **PMCC Kitui 40, 53, 54 and 122 of 2011**. That the Applicant's objection proceedings in the aforesaid suits was dismissed after his advocate who did not have a current practicing certificate failed to attend court. A further application for stay of execution failed. It is that the Applicant moved to this court and instituted the suit herein by way of plaint dated 24/10/13 seek *inter alia*, declaratory orders that the motor vehicle belongs to him.
3. In opposition to the application, the Respondents filed a replying affidavit. It was averred that there is no evidence of transfer of the motor vehicle in question from **Asitama Trading Co. Ltd** to the 1st Respondent herein. That the motor vehicle was attached by **Kande Auctioneers** who are not parties herein and that the release of motor vehicle can only be made by way of objection proceedings. That if the Applicant was aggrieved by the ruling of the lower court, he ought to have exercised his right of appeal. According to the Respondents, the application is an abuse of the process of the court.
4. The application was canvassed by way of written submissions which I have duly considered.
5. It is not in dispute that the proceedings herein emanate from execution proceedings in the suits

before the lower court. Consequently, I agree with the submissions by the Respondent's counsel that the correct forum for the release of the motor vehicle was through objection proceedings during the execution process. Any dissatisfaction with the lower court's ruling in the objection proceedings or any other subsequent proceedings ought to come to this court by way of appeal. The application has no merits and I dismiss the same.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **24th** day of **November 2014**.

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B. THURANIRA JADEN

JUDGE