



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 436 OF 2012

REPUBLICAPPLICANT

VERSUS

KENYA REVENUE AUTHORITY1ST RESPONDENT

REGISTRAR OF MOTOR VEHICLES2ND RESPONDENT

NATIONAL TRANSPORT &

SAFETY AUTHORITY3RD RESPONDENT

JOHN MWANGI MUCHIRAINTERESTED PARTY

EX-PARTE

NIC BANK LIMITED

JUDGMENT

The Applicant's prayers as contained in the notice of motion application dated 20th December, 2012 are:-

1. AN ORDER OF MANDAMUS directed to respondents compelling them to effect joint registration of motor vehicle registration number KAU 333F Mercedes Benz in the joint names of the Ex-parte Applicant and the Interested Party.
2. AN ORDER OF MANDAMUS directed to the Respondents compelling them to rectify their records in respect of ownership of motor vehicle registration number KAU 333F Mercedes Benz to reflect the Ex-parte Applicant and the Interested Party as owners of the said motor vehicle.
3. AN ORDER OF PROHIBITION directed to the Respondents restraining them from further altering their records in respect of motor vehicle registration number KAU 333F, other than to reflect the Applicant and the Interested Party as the owners of the said vehicle, without the written consent of the Ex-parte Applicant and/or the deposit by the Applicant with the Respondents of the original logbook and valid transfer documents in respect of the said vehicle and from effecting registration of motor vehicle registration number KAU 333F in the names of any persons other than the Applicant and the Interested Party without the written consent of the Applicant and/or the deposit by the Applicant with the Respondents of the original logbook and valid transfer documents in respect of the said vehicle.

4. Costs of this application to be borne by the Respondents.

The application is supported by the chambers summons application for leave, a statutory statement, a verifying affidavit sworn by the Applicant's Legal Officer Ms Lilian Sogo and annexures thereto. All these documents were filed in court on 11th December, 2012.

The 1st Respondent, Kenya Revenue Authority, is a statutory body established to collect and receipt all revenue in the Republic of Kenya. The 2nd Respondent, the Registrar of Motor Vehicles, is the head of the transport department within the 1st Respondent and was previously charged with the responsibility of registering all motor vehicles in Kenya under the Traffic Act. Its mandate has since been transferred to the 3rd Respondent, the National Transport and Safety Authority, which was established under the National Transport and Safety Authority Act No. 33 of 2012. The 3rd Respondent is therefore the authority currently charged with the responsibility of undertaking the registration of all motor vehicles within the Republic of Kenya.

The Applicant, NIC Bank Ltd, is a limited liability company carrying on the business of a bank in the Republic of Kenya. In December 2005, the Applicant entered into a hire purchase agreement with the Interested Party, Mr. John Mwangi Michira. Through the said agreement the Applicant was to finance the purchase, by the Interested Party, of motor vehicle registration number KAU 333F Mercedes Benz for the sum of Kshs.3,008,600/=. The facility was to be paid by way of 47 monthly installments of kshs. 83,740/= to be secured by the joint registration of the motor vehicle in the names of the Applicant and the Interested Party. After the purchase of the vehicle from a company known as Hypercars Limited, the Applicant submitted the original logbook and a duly filled transfer form to the respondents so that they could carry out the joint registration of the motor vehicle in the names of the Applicant and the Interested Party. A logbook was later issued to the Applicant indicating that the motor vehicle has been registered in its name and that of the Interested Party.

It is the Applicant's case that despite having the logbook in its custody, subsequent searches carried out with the respondents have indicated that the motor vehicle is registered in the names of other parties. That is why the Applicant is before this court with this application.

There is evidence placed before the court by the Applicant showing that all the respondents and the Interested Party were served with the court papers. The 2nd and 3rd respondents and the Interested Party did not respond to the application. The 1st Respondent filed a replying affidavit sworn by Twahir Alwi Mohamed and through the said affidavit indicated that it was not opposed to the application. It is also noted that the 2nd and 3rd respondents and the Interested Party had also been notified about the hearing slated for 10th June, 2013 but they did not attend court.

There being no opposition to the application, the only issue to be considered is whether the orders sought are available to the Applicant. I have gone through the annexures to the application. There is a copy of a logbook dated 31st July, 2006. According to the said logbook the motor vehicle was first registered in the name of Ahmed M Abdallah of Mombasa. The date of registration is indicated as 28th July, 2005. The same extract also shows that the vehicle has been transferred to the Applicant and the Interested Party. A copy of records dated 22nd November, 2007 indicates that the vehicle belongs to Westwood Children Centre. Another copy of records dated 11th January, 2010 indicates that the motor vehicle belongs to the Applicant and Interested Party. Other copies of records dated 8th October, 2012 and 3rd December, 2012 shows the owner of the motor vehicle as Ahmed Mohamed Abdallah. The Applicant being dissatisfied with this state of affairs wrote to the 2nd Respondent on 8th October, 2012 demanding that it rectifies its records. There was no response to the said demand.

In 2008 the Interested Party filed **High Court Civil Suit No. 126 of 2008** at Milimani Commercial Courts against Hypercars Limited and the Applicant herein based on the ground that the records with the 2nd Respondent showed that the vehicle was registered in the name of a third party. He therefore demanded

refund of whatever he had paid to the two defendants. That suit is still pending.

Looking at the evidence placed before this court, it is clear that the 2nd and 3rd respondents have clearly abdicated their duty. They cannot change the ownership of the motor vehicle in question without the clear authority of the Applicant and the Interested Party. After all the logbook is with the Applicant and it is a sign of unmitigated negligence for the two respondents to indicate that the motor vehicle belongs to anybody else other than the Applicant and the Interested Party. In my view, the orders sought by the Applicant are deserved. The 2nd and 3rd respondents have abdicated their statutory duties and only an order of mandamus can compel them to discharge their mandate. They should be prohibited from transferring the vehicle in question without the clear authority of the Applicant and the Interested Party. As such the notice of motion application dated 20th December, 2012 is allowed with no orders as to costs.

Dated, signed and delivered at Nairobi this 7th day of August , 2013

W. K. KORIR,

JUDGE