



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE 19 OF 2012**

**GEORGE MICHUGU KAMAU..... PLAINTIFF**

**VERSUS**

**1. LILIES HOSTELS LIMITED**

**2. CFC STANBIC BANK LIMITED.....DEFENDANTS**

**RULING ON INTERIM ORDERS**

1. The Plaintiff's case in this suit is that he, in effect, purchased from the 1<sup>st</sup> Defendant the two motor vehicles the subject matter of this suit in January 2011 in the circumstances outlined in the plaint for the total sum of KShs 2,148,077/00 (which he paid), and that he took possession of the same (and still has possession) pending legal transfer of the vehicles to him.

2. Pending disposal of the suit the Plaintiff applied by notice of motion dated 20/01/2012 for appropriate temporary injunction to protect his possession of the motor vehicles. That application was on 13/03/2012 fixed for hearing on 22<sup>nd</sup> May 2012. The court also ordered, *inter alia*, that the motor vehicles remain in possession of the Plaintiff subject to the condition that he should not use or drive them at all pending the further order of the court, with the position to be reviewed on 28<sup>th</sup> March 2012. That restriction was informed by the fact that the Defendants' learned counsel expressed the fear that use of the motor vehicles might expose the Defendants to suits in the event of an accident as their insurance had been withdrawn. The Plaintiff's learned counsel was at that time not in a position to confirm if the motor vehicles were insured. By supplementary affidavit filed by the Plaintiff on 27<sup>th</sup> March 2012, it was confirmed that the motor vehicles were indeed insured.

3. On 28<sup>th</sup> March 2012 the Plaintiff's learned counsel submitted that the Plaintiff should be allowed to continue using the motor vehicles as he has been for the last one year or so pending at least hearing and disposal of the notice of motion dated 20<sup>th</sup> January 2012. Learned counsel for the Defendants on the other hand submitted that the KShs 2 million odd that the Plaintiff had "*advanced*" to the 1<sup>st</sup> Defendant had already been repaid by the Plaintiff's use of the motor vehicles for the past year or so. Obviously that is not an issue that can be properly adjudicated upon at this stage. It will be an issue at the trial of the suit.

4. The picture at present is as follows. The Plaintiff paid more than KShs 2 million to the 2<sup>nd</sup> Defendant for and on behalf of the 1<sup>st</sup> Defendant in order to save the two motor vehicles from sale by the 2<sup>nd</sup> Defendant (there was a hire-purchase agreement between the two defendants over the motor vehicles). The Plaintiff says that he thereby purchased the motor vehicles. On its part the 1<sup>st</sup> Defendant says that the money expended by the Plaintiff was a loan advanced to it upon terms that have not been disclosed.

5. Possession of the motor vehicles appears to have been given to the Plaintiff by consent upon paying to the 2<sup>nd</sup> Defendant the money owed by the 1<sup>st</sup> Defendant. He has had possession for the last one year or so.

6. I hold that the dictates of justice demand that the Plaintiff continues in possession pending hearing and disposal of the notice of motion dated 20<sup>th</sup> January 2012. The restriction that he should not drive or otherwise use the motor vehicles is hereby removed, provided that the two motor vehicles shall be comprehensively insured at all such times. It is so ordered. Costs shall be in the cause.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL 2012**