



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

Civil Case 123 of 2012

JIDRAFF GATHURA ::: PLAINTIFF/APPLICANT

- VERSUS -

PETER MATHENGE MUTHIMA :::::::::::::::::::: 1ST DEFENDANT/RESPONDENT

JEFF KIAMA ::::::::::::::::::::::::::::::::::::::: 2ND DEFENDANT/ RESPONDENT

R U L I N G

By a Notice of Motion dated 27th February 2012 the Plaintiff seeks orders of this court in the nature of injunction directed against the Defendants or their agents restraining them from alienating, transferring ownership or selling or in any other manner whatsoever dealing with motor vehicle registration number KBN 401N so as to defeat the Plaintiff's proprietary interests in the said motor vehicle. The application is supported by the affidavit of the Plaintiff dated 27th February 2012 with its annexures and is based on the grounds stated in the application.

The application is opposed by affidavit of Peter Mathenge Muthima, the 1st Defendant, dated 2nd March 2012 with its annexures.

The brief history of the application as I conceive it from the pleadings, is that the Plaintiff and the 1st Defendant were friends and entered into an arrangement where the Defendant purchased motor vehicle KBN 401N through a Hire Purchase Agreement with CFC Stanbic Bank who became a co-owner with the 1st Defendant. The Plaintiff became involved in the matter when he either agreed to meet some financial obligations of the 1st Defendant for example when he allegedly paid Kshs.350,000/= to Frames Fabricators, or when he agreed to use the said motor vehicle and contribute to the loan repayment as shown in the annexures of the accounts.

On his part the Plaintiff alleges that he purchased the said motor vehicle and is solely repaying the loan. The appearance of the 1st Defendant's name in the log book is simply because the Plaintiff used the 1st Defendant's good reputation with the Financier to access the loan in the names of the 1st Defendant.

The 1st Defendant's story however, is that he purchased the said motor vehicle and gave it to the Plaintiff to carry out business with it and to repay the loan. The Plaintiff has not done the same and the bank has twice demanded for the repayment.

It is not clear to me from the pleadings whom to believe. What is however, clear to me is that the Plaintiff is not telling this court the whole truth. However, more amazing to me is why both the Plaintiff and the 1st Defendant, who both have legitimate interest in the said motor vehicle, should want it to remain idle instead of it being used to bring in money to repay the loan.

On 13th March 2012 parties entered into a consent whereby by the said motor vehicle KBN 401N was to be delivered by the Defendants to Mt. Kenya Garage for safe keeping pending the *inter-partes* hearing of the application. The application has now been heard *inter-partes*. I believe one or both of the parties are misleading this court. On the basis of the affidavits sworn in this matter this court is not in a position to grant or reject the prayers sought. I rule and direct that the *status quo* of the suit property be maintained and the suit immediately be listed for hearing so that all the issues can be openly determined in a trial.

I make no orders as to costs.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 6TH DAY OF JUNE 2012.

E. K. O. OGOLA

JUDGE

PRESENT:

N/A/ for the Plaintiff

A. S. Masika for the Defendants

Teresia – Court clerk