



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL CASE NO. 159 OF 2010**

**EDWARD SAYA MALOBI JUMA .....PLAINTIFF/  
APPLICANT**

**VERSUS**

**NZOIA SUGAR CO. LTD. ....DEFENDANT/  
RESPONDENT**

**RULING**

**1.** In the Complaint dated 26.10.2010, the Plaintiff, **Edward Saya Malobi Juma**, averred that on 20.10.2010, the Defendant impounded his motor-vehicle registration number KAA 639Z with sugar cane on board and proceeded to park it at its yard without any lawful cause. By a Chamber Summons dated the same day i.e. 26.10.2010, he sought orders under **S.3A** and **63 (c)** of the Civil Procedure Act and **Order XXXIX Rules 1** and **2** of the Civil Procedure Rules that;

***“1. That this matter be certified urgent and heard ex-parte in the 1<sup>st</sup> instance;***

***2. That pending the hearing and determination of this suit the Defendant be ordered to release to the Applicant Motor Vehicle Re. No. KAA 639Z.***

***3. That a temporary injunction to issue restraining the Defendant’s agents from interfering with the Plaintiff’s sugar cane farming business pending the hearing and determination of this suit.***

***4. Costs of this application be provided for.”***

**2.** The grounds in support are that;

***“i) The Defendant is withholding the Plaintiff’s sugar cane and a hired lorry as from 20<sup>th</sup> October, 2010.***

***ii. The Plaintiff had harvested the sugar cane from his farm and was transporting the sugar cane to his other farm for plaintiff when the Defendant’s agents pounced on suspicion that the sugar cane belonged to the Defendant and that it had been poached.***

***iii. The Defendant has no lien over the lorry or the sugar cane.***

***iv. The Plaintiff’s suit has very high chances of success.***

***v. The Plaintiff has been occasioned great loss and damage which he continues to suffer.***

***vi. The defendant will not suffer any prejudice if ordered to release the lorry to its rightful owner pending the hearing and determination of this suit.”***

**3.** In the Supporting Affidavit sworn on 26.10.2010, the Applicant deponed that in fact m/v registration No. KAA 639Z was hired from one, John Kamau, and that it was unlawfully impounded by the Defendant’s agents who then demanded a payment of Kshs.30,000/= before it could be released. That he had hired the lorry at the rate of Kshs.20,000/= per day which money was being demanded by John Kamau aforesaid. His argument is that the actions of the Defendant are unlawful and without basis whatsoever.

**4.** In a Replying Affidavit sworn on 1.11.2010, one Rita Mukhongo, Legal Officer of the Defendant Company deponed that the Application was mischievous and made in bad faith because;

**i.** The motor-vehicle in question was impounded by Police Officers from Nzoia Police Station on suspicion of ferrying stolen cane.

**ii.** The individual known as John Kamau Njuguna reported an incident of assault to the same station on 14.10.2010.

**iii.** There is no evidence that John Kamau was the owner of the motor-vehicle and that he had hired it to the Applicant.

**iv.** That the Applicant has instituted Webuye SRMCC No.194/2010 seeking the same orders as the present suit.

**v.** No demand for payment of Kshs.30,000/= has been made by the Defendant to the Applicant.

**5.** To my mind, weighing the contested issues, the Application before me is frivolous and less than serious. I say so, with respect, because, the issue of ownership of KAA 639Z is contested. A log-book for M/v KAA 354P has been annexed to the supporting Affidavit of the Applicant to show that it belongs to John Kamau. But in fact the log-book shows that KAA 354P belongs to the Applicant and the thread of

evidence is thereby lost because KAA 354P has got nothing to do with the present proceeding. Further, it is urged that John Kamau had hired out the vehicle to the Applicant and a claim for loss of user is made but where is the hire contract and where is the evidence of loss of Kshs.20,000/= every day? None whatsoever exists.

6. Further, it would seem that on 14.9.2010, m/v registration No. KAA 354P was allegedly impounded by the Defendant leading to the filing of Webuye SRMCC No. 194 of 2010. The Applicant failed to disclose that fact and to explain what happened to that suit before filing the present one. He is therefore being less than candid and equity cannot be expected to favour him, more so, where his differences with the Respondent relate to a series of disagreements over sugarcane that he was allegedly unlawfully transporting and not the single incident complained of in the Application.

7. Lastly, it is obvious that the matters raised have or are being addressed by the Nzoia Police Station and that is the best forum to address the dispute of alleged unlawful impounding of the motor-vehicle.

8. In any event, the Application before me meets none of the principles set out in *Geilla vs Cassman Brown [1973] E.A 358* and is best dismissed with costs.

9. Orders accordingly.

*Delivered, dated and signed at Kakamega this 22nd day of February, 2011.*

**ISAAC LENAOLA**

**J U D G E**