



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
CIVIL CASE NO.17 OF 2010

JANET MWENDE KIMELI.....1ST PLAINTIFF/APPLICANT
ZAHID ENTERPRISES LTD.....2ND PLAINTIFF/APPLICANT
ROAD RUNER CARRIERS LTD.....3RD PLAINTIFF/APPLICANT
ASHOK PANCHAL.....4TH PLAINTIFF/APPLICANT
IMPERIAL BANK.....5TH PLAINTIFF/APPLICANT
MAX TRANSPORTERS.....6TH PLAINTIFF/APPLICANT

Versus

DILBAGH SINGH BROTHERS (INVESTMENT LIMITED)...1ST DEFENDANT/RESPONDENT
KENYA RAILWAYS CORPORATION.....2ND DEFENDANT/RESPONDENT

RULING

By Chamber Summons dated 18th January 2010, Plaintiffs/Applicants are praying for a temporary injunction restraining the 2nd Defendant, its agents and/or officers from levying distress, attaching, advertising for sale, selling the Plaintiff's properties in furtherance of the distress for rent levied by Messrs Sadique Enterprises. The Applicants further seek a temporary mandatory injunction compelling the Defendants/Respondents to release to the Applicants Motor vehicles registration numbers KAX 731 K, KAU 254 Q, KAV 883 T, KAM 912 K, ZB 8280.

From what the parties are saying, the Applicants had taken the above mentioned motor vehicles to the 1st Respondent's garage when Messrs Sadique Enterprises proclaimed the said motor vehicles upon instructions by the 2nd Respondent for the purpose of levying distress for rent alleged owned by the 1st Respondent to the 2nd Respondent.

On the balance of probabilities the motor vehicles do not belong to the 1st Respondent. The 1st Respondent does not own the motor vehicles and there is no evidence that the Applicants are in any way connected with the 2nd Respondent concerning the motor vehicles, except as garage repairing aforementioned motor vehicles.

The 2nd Respondent has not brought any evidence to show that the vehicles were owned by the 1st Respondent. On the other hand, the 1st Respondent supports what the Applicants are saying.

In the circumstances, I cannot comprehend how the 2nd Respondent thought what was done was the correct and lawful way of recovering rent from the 1st Respondent and I think it would be proper to grant the prayers sought by the Applicants in this Chamber Summons.

Accordingly, Chamber Summons dated 18th January 2010 be and is hereby granted as prayed.

Dated this 19th day of February 2010.

J.M. KHAMONI

JUDGE

Present:

Morara Naisa & Co. Advocates for the Applicants

Mwaniki Gachoka & Co. Advocates for the 2nd Respondent