

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 398 of 2009

REV. NJAU GICHIRA (*Suing as official of Fountain of Life Ministries*).....PLAINTIFF

VERSUS

WATER MASTERS KENYA LTD.1ST DEFENDANT

P.J. FLOWERS LIMITED 2ND DEFENDANT

RULING

Chamber Summons dated 25/5/09 is brought under **Order 39 (1) (a), 2, 9** and **Section 3A Civil Procedure Code**. The applicant seeks the release of motor vehicle KAV 956 Q and the Mounted Drilling Rig thereon to the plaintiff.

The application is based on the grounds stated and affidavit of Rev. Njau Gichira, the plaintiff's National Chaplain. The plaintiff is the legal and registered owner of the motor vehicle KAV 956 Q, log book exhibited as "NG1". The vehicle has on it mounted a drilling rig used to dig water wells. The plaintiff put the lorry to work in Turkana arrears.

On or about 23/2/09 the first defendant approached the plaintiff employee and asked for help to the first defendant to fish out some tools stuck in their borehole located at 2nd defendant parcel of land commonly known as "P.J. Flowers." It was agreed in writing that payment was Kshs.200,000/= and a deposit was to be 30% of purchase price and 70% upon successful completion. If fishing was not successful after 2 weeks the contractor may pull out of site upon payment of 20% of the balance, a copy of the contract is exhibited as "NG 2".

In the process the first defendant requested the plaintiff to perform some work in a borehole not included in the contract of fishing out tools. And unknown to the plaintiff, there was a dispute between the 2nd defendant and 1st defendant. The plaintiff's lorry was detained and it is detained in the second defendant's premises.

The first defendant admits hiring the plaintiff's percussion rig in terms of document "NG 2". It is admitted that the plaintiff's motor vehicle and the mounted rig is unlawfully held by the 2nd defendant. The 1st defendant agrees that the plaintiff's vehicle and mounted rig may be released.

I have perused the affidavit filed by the second defendant. It has filed no counter-claim against the applicant. Whatever claim it may have against the first defendant, it is not disclosed and has nothing to do with the applicant. The 1st defendant agrees that the plaintiff's vehicle and machinery is unlawfully held by the 2nd defendant. I find that the ownership of the applicant's vehicle and machinery is not challenged by the defendants.

In the circumstances, the applicant has shown a *prima facie* strong case with a good chance of success. I therefore allow the application and grant orders as prayed in terms of prayer 3 and 4. The 2nd defendant shall unconditionally release the applicant's motor vehicle KAV 956 Q to the applicant forthwith and in any case within the next 7 days of this order.

The 2nd defendant shall pay the costs of this application.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 30th day October, 2009.

JOYCE N. KHAMINWA

JUDGE