

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Case 14 of 2008

1 MOHAMMED AHMED ABUBAKAR
2 MOHAMMED HAMID KHAMISPLAINTIFFS

VERSUS

1 SIMON MBUGUA
2 LANGATA ROAD MOTORS LTDDEFENDANTS.

RULING

Mr. Buti for the plaintiff applies for the motor vehicle which is the subject matter of this suit to be preserved pending the disposal of the main application.

Mr. Onyango for the third defendant objects to the application because the initial orders were made in respect of the first and second defendants and the third defendant was not a party. Secondly, the orders were made under Order XXXVIII by way of attachment before judgment and not for preservation. He submitted that for the later course of action, a formal application ought to be made. At any rate if such orders are made, they will contradict the ruling which had just been delivered.

In reply, Mr. Buti argued that it was not correct for Mr. Onyango to state that his client was not a party to the proceedings while he was now the third party. He also submitted that when the protagonists are disputing the title, the vehicle should be preserved. He finally urged that if a formal application were required, he would apply for 14 days within which to file the application, and that until then motor vehicle would be preserved.

I have considered the submissions of the respective counsel. The orders which were made by this court in this matter on 7th February, 2008 were made when the third defendant was not a party to these proceedings. For the reasons adduced in the court's ruling dated 19th March, 2008, these orders were not confirmed. Logically, therefore, there are no orders in force at this stage.

Learned counsel for the plaintiffs now seeks orders that the vehicle be preserved. At this juncture, I don't think that the orders sought should be granted on an oral application. In all fairness, that is an application which ought to be made formally so that we are all in the know as to the parameters within which the vehicle is being preserved.

The plaintiffs are at liberty to file a formal application, if they so wish. Otherwise, there is no compelling reason as to why the vehicle should be preserved pending a formal application to preserve it.

If I may be of assistance to the parties, it is the very sincere view of this court that the shortest route to the end of this matter is the expeditious hearing and disposal of the application by chamber summons dated 4th February, 2008.

Dated and delivered at Mombasa this 20th day of March 2008

L. NJAGI

JUDGE