



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 30 of 2000

JAMES MTOKAAPPLICANT

VERSUS

ASSOCIATED MOTORS LIMITED.....RESPONDENT

RULING

1. The application before court is the Notice of Motion dated 3/10/2007 and filed in court on 1/11/2007 brought under Sections 3A and 63(c) and (e) of the Civil Procedure Act. The applicant prays for ORDERS:-

- (i) *THAT the Defendant be granted leave to sell the Plaintiff's motor vehicle registration number KDK 539 by way of public auction or private treaty.*
- (ii) *THAT the proceeds of the said sale be applied towards storage charges to be calculated by the Defendant.*
- (iii) *THAT the costs of this Application be borne by the Plaintiff.*
- (iv) *THAT such further or other order or orders be made as this Honourable Court may deem just and expedient.*

2. The application is premised on three grounds on the face thereof and in the main it is contended that the plaintiff has failed to collect the vehicle from the defendant for a period of over nine years despite several notices by the defendant to the plaintiff of intention to dispose of the said motor vehicle. There is also the affidavit of Ramzan Jawal dated 31/10/2007 in support of the application.

3. Mr. Jamal depones that by a judgment dated 17/12/1999, the trial court in Nairobi (Milimani) CMCC No.2942 of 1998 ordered the Defendant to retain the subject motor vehicle to the plaintiff. That the defendant appealed to this court, but that the appeal was dismissed by the judgment of Mr. Justice Sheikh Amin delivered on 30/07/2002. It is said further by Mr. Jamal that on appeal, the court still ordered return of the subject motor vehicle in the same condition in which it was impounded. Mr. Jamal also says that by an application dated 28/07/2005 the plaintiff applied for directions of the court touching on the condition of the motor vehicle and that is when Hon. Mr. Justice Ransley ordered the matter remitted to the RM's court for an inquiry into the state of the motor vehicle when it was impounded.

4. Mr. Jamal states further that since the 25/10/2005, the plaintiff has failed to collect the said motor vehicle from the defendant's premises despite notices sent to him by the defendant. From the annexures,

the defendant wrote to the plaintiff on 19/05/2005, 3/06/2005, 27/06/2005, 13/02/2006, 28/04/2006; 25/05/2007, 7/06/2006 and 15/08/2006 respectively through the defendant's lawyers, M/s Mohamed & Samnakay Advocates but that the plaintiff has neither responded nor appeared to collect the motor vehicle. Mr. Jamal also says that the defendant is entitled to storage charges at the rate of Kshs.500/= per day from 17/12/1999 upto the date of disposal of the said motor vehicle.

5. The application is not opposed. Neither a Replying Affidavit nor grounds of opposition have been filed by the plaintiff/respondent. The plaintiff/respondent also failed to appear at the hearing either by himself or his advocate who was duly served with the hearing notice.

6. At the hearing, hereof, Mr. Otieno for the defendant/applicant urged the court to grant the orders sought so that the defendant/applicant can sell the subject motor vehicle by public auction. The question that arises is whether the applicant has made out a case for the orders sought.

7. I have carefully considered the application as filed, the grounds in support thereof, the Supporting Affidavit and the annexures thereto. I have also considered the submissions by counsel for the applicant in the absence of both the plaintiff/respondent and his counsel who were duly served but chose not to attend the hearing. I am persuaded on the basis of the above that it would be in the interests of justice to grant the orders sought and accordingly I allow the applicant's application and make the following orders:?

a. That leave be and is hereby granted to the Defendant/Applicant to sell the Plaintiff's/ Respondent's motor vehicle Registration Number KDK 539 by way of public auction.

b. That the proceeds of the said sale be applied towards storage charges at the rate of Kshs.500/= per day from 17/12/1999 to the date of this ruling.

c. That the costs of this application shall be borne by the Plaintiff/Respondent.

It is so ordered.

Dated and delivered at Nairobi this 9th day of May 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Applicant

Respondent