

REPUBLIC OF KENYA

MILIMANI COMMERCIAL COURTS

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE 590 OF 2008

SAMUEL MUIRURI NJOROGE.....PLAINTIFF

VERSUS

EQUITY BANK LTD..... 1STDEFENDANT

ANTIQUE AUCTIONS LTD.....2ND DEFENDANT

RULING

On 09.10.2008 the Applicant filed Chamber Summons seeking orders against first Defendant restraining it from wasting, damaging, Auctioning or dealing in any manner with Ten Wheel truck ISUZU FVZ registration number KAV 295m until the hearing of this suit.

The grounds are set out in the application being that the vehicle was purchased at a price of Kshs. 6 million through a loan advanced by first Defendant and that the applicant has been repaying by monthly installment of Kshs. 202,000 /= per month and that to date he has paid 3,000,000 /= leaving a balance in the sum of Kshs.3 million which balance shall be fully paid in April 2009.

However, the said vehicle was attached on 04.10.2008. That the Applicant will lose contracts won to transport goods with the said lorry.

The Respondent has filed a Replying Affidavit. It is sworn that the vehicle is jointly registered in the joint names of Plaintiff and Defendant and that the Plaintiff was to pay the loan advanced by installments of Kshs. 206,667 /= as stated in clause 4 of the said agreement. Paying regularly by April 2009 (36 months) the full payment to be Kshs.7,440,012 /= and by September 2008 should have been 5,993,343 /= and a balance remaining was kshs.1,446,669 /= to clear the debt. However, the Plaintiff had only paid Kshs.3,212,465 /= leaving a balance of 2,780,878 /=, that there has been default.

It is therefore clear that the Applicant shall suffer loss if the vehicle is sold and repossessed as contemplated under clause 12 of the agreement. Applicant will also suffer loss of profits and business he would have made if the vehicle was not repossessed. The provisions of repayment are under clause 4 of the agreement. Clause 5 relates to payment of interest at a rate of 8 % with penalty at rate of 6% per annum.

The Applicant has not disclosed all these issues of default payment of interest. He simply states that the loan is Kshs.6 million and he has paid 3,000,000 /= with balance being Kshs.3,000,000 /= only. Furthermore the Plaintiff signed and accepted the terms of the contract. The court is not empowered to interfere with the terms of contracts entered into by parties of their free-will.

The Plaintiff seeks equitable remedy but comes before the court without disclosing full facts of the case. He wants to give the court impression that the loan is less than the actual figure and that he has paid half of the loan. This is not reality. I therefore decline to grant orders sought.

The application is dismissed with costs.

DATED this 7th day of November 2008.

JOYCE N. KHAMINWA

JUDGE