



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 554 of 2004

ALOYS OBIEDI AKUMU
.....PLAINTIFF

V E R S U S

UNIVERSITY OF OXFORD, DEPARTEMNT OF

THE OXFORD UNIVERY PRESS1ST DEFENDANT

MURIUKI NJAGAGUA

(T/A MURIUKI NJAGAGUA & CO., ADVOCATES).....2ND DEFENDANT

ALEXANDER JAMES3RD DEFENDANT

OLDONYO LARO ESTATE LIMITED.....INTERESTED PARTY

R U L I N G

In the suit herein the Plaintiff, ALOYS OBIEDI AKUMU, has pleaded that he is the registered owner of motor vehicle registration number **KAH 900E**, make Range Rover. He has further pleaded that the same was forcefully taken away from him by the 3rd Defendant acting on the 2nd Defendant's written instructions for and on behalf of the 1st Defendant, allegedly on account of a debt due and owing to the 1st Defendant by one JOSMAN CONSULTANTS LIMITED. He has therefore sought the following main reliefs by plaint dated 27th May, 2004:-

1. An injunction to restrain the Defendant from dealing in whatever manner with the said motor vehicle.
2. A mandatory injunction to compel the Defendants to return the motor vehicle to him.
3. General damages.

By a ruling dated and delivered on 14th September, 2006 this court (Osiero, J) ordered that the motor vehicle be restored to the possession of the Plaintiff following his application by amended chamber summons dated 12th July, 2004 (the original chamber summons was dated 27th May, 2004).

I cannot see on the record any defences filed by the Defendants.

The Interested Party herein, **OLDONYO LARO ESTATE LIMITED**, has come to court by chamber summons dated 2nd April, 2007 seeking the following main orders:-

1. That the Interested Party be made a party in these proceedings.
2. That the order of 14th September, 2006 (extracted and issued on 6th October, 2006) be set aside.
3. That the Plaintiff and his agents or servants be restrained from in any way interfering with motor vehicle registration number KAH 900E.
4. That thereafter the said motor vehicle be released unconditionally to the Interested Party.

The Interested Party's case in this application, as set out in the two affidavits sworn in support thereof, is that it is the registered owner of the motor vehicle in question, having purchased the same from one SALIM WALI MOHAMMED who in turn had purchased the motor vehicle in a public auction. Copies of documents in support of these purchases as well as the claimed ownership of the Interested Party are exhibited in the supporting affidavits.

The Plaintiff has opposed the application as per grounds of opposition dated and filed on 9th May, 2007. Those grounds are, that the application is a wanton and reckless abuse of the process of the court; that it lacks merit; that it is bad in law; and that the orders sought are superfluous and of no legal consequence. There is a replying affidavit sworn by the Plaintiff and filed on 11th of May, 2007. In it he avers, *inter alia*, that the sale of his motor vehicle to SALIM W. MOHAMMED in May 2005 was unlawful, and in effect therefore, that the said Mohamed could not have acquired a good title to the motor vehicle, and he could not in his turn have passed a good title to the Interested Party. There are other substantial issues raised in the replying affidavit; it is also apparent that the motor vehicle has been the subject of other litigations. All the Defendants have not opposed the Interested Party's application. At the hearing of the application there was no appearance for the Plaintiff, notwithstanding that the hearing date had been taken in court by consent.

I have considered the submissions of the learned counsel for the Interested Party. It is apparent to me that the presence of the Interested Party in these proceedings is necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions in the suit. I will therefore order that the Interested Party be added in the proceedings as the 4th Defendant. Consequent upon that addition it is necessary under Order 1, rule 10(4) of the Civil Procedure Rules for the plaint to be amended. I direct that the Plaintiff do within 14 days of delivery of this ruling file an amended plaint. A copy of the same, together with summons to enter appearance, shall be served upon the Interested Party, now 4th Defendant. Copies of the amended plaint shall also be served upon the other Defendants; if they have filed their defences, they may file amended defences within 14 days of service of the amended plaint.

Regarding the other prayers of the application, there is need to preserve the motor vehicle in question pending hearing and disposal of the suit. But before I can make an appropriate order it is necessary for the court to know the present status of the motor vehicle. In whose custody is it now? Where is it kept? Is it on or off the road? I require parties to address the court on these points. They may do so by filing further affidavits and by oral submissions. So, I will, for now, decline to set aside the order of 14th September, 2006, or to order release of the motor vehicle to the Interested Party, now 4th Defendant, as sought. Pending the further orders of the court, the interim order given on 9th July, 2007 which forbade any sale, transfer or disposal of motor vehicle registration number KAH 900E, make Range Rover, by any person is extended. Costs of this application shall be in the cause. Orders accordingly.

DATED AT NAIROBI THIS 18TH DAY OF JULY, 2007

H. P. G. WAWERU

JUDGE

DELIVERED ON 20TH DAY OF JULY, 2007