



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 353 of 2007

MUTHAMA GEMSTONES (K) LIMITED PLAINTIFF

versus

CMC MOTORS GROUP LIMITED 1ST DEFENDANT

MERICAN LIFE INSURANCE COMPANY (K) LTD. 2ND DEFENDANT

RULING

In the Chamber Summons dated 6th July 2007 before me, Mr. Muchigi as counsel for the Plaintiff/Applicant has told me that the only orders his client wishes to obtain are in respect of prayers 5 to 8 inclusive, as they already have interim orders in terms of prayers 1 to 3 and have given an undertaking as to damages. Prayer 5 states:

"THAT pending the hearing and determination of this suit the 1st Defendant whether by itself, its servants or agents or otherwise howsoever be restrained from selling, disposing off, transferring or alienating motor vehicle registration number KAJ 537K."

Prayer 6 adds:

"THAT pending the hearing and determination of this suit the 1st Defendant whether by itself, its servants or agents or otherwise howsoever be restrained from committing a breach or continuing to commit a breach or to remain in breach of its obligations under bailment and common law duty of care."

Prayer 7 concludes:

"THAT pending the hearing and determination of this suit the 2nd Defendant whether by itself, its servants or agents or otherwise howsoever be restrained from committing a breach or continuing to commit a breach or to remain in breach of its obligations under the Insurance Policy."

Prayer 8 is for costs.

Briefly, the Plaintiff/Applicant was at all material times the owner of motor vehicle registration number KAJ 537K which was insured by the 2nd Defendant/Respondent comprehensively. The said motor vehicle was subsequently car-jacked and abandoned in the middle of the road after being involved in an accident along Mombasa Road. That accident damaged the vehicle thereby causing loss.

The Plaintiff duly reported the matter to the 2nd Defendant and having paid the balance of the insurance premium, the Plaintiff, upon instructions by the 2nd Defendant, delivered the motor vehicle to the 1st Defendant for repair, restoration and related services.

To that effect the 2nd Defendant caused the accident. Motor vehicle to be examined to locate and assess the damages and relevant reports were made following the inspections and on the basis of the defects shown in the reports, the 1st Defendant carried out repairs to the Plaintiff's motor vehicle.

But in the process of the repairs there arose disagreement mainly over the gear box whether the damages to it existed prior to the accident or as a result of the accident and this developed to a situation where the Defendants particularly the 1st Defendant were asking the Plaintiff to collect the motor vehicle from the 1st Defendant's workshop because all the repairs resulting from the accident had been done while the Plaintiff declined collecting the motor vehicle on the grounds that all those repairs had not been done.

When therefore the 1st Defendant threatened to sell the Plaintiff's motor vehicle for failure by the plaintiff to collect the motor vehicle and therefore for storage charges, the plaintiff moved to this court filed this suit and to-day therefore the motor vehicle is still in the 1st Defendant's workshop and the 1st Defendant could go ahead and sell, dispose off or transfer or alienate the said motor vehicle before the suit herein is heard and determined.

In that respect, it is reasonable to grant prayer . It is not reasonable to grant prayers 6 and 7 as each in my view, is general, vague and seeks to condemn the Defendant concerned before the relevant evidence is adduced, tested and evaluated during the main trial.

Accordingly, I do hereby grant prayer number 5 and dismiss prayers number 6 and number 7. In the circumstances the cost asked for in prayer number 8 be costs in the cause.

Dated this 26th day of October 2007.

J. M. KHAMONI

JUDGE

Present:

Mr. Muchigi for the Applicant.

Mr. Ondiek for the 2nd Respondent

Court Clerk – Kipkurui

J. M. KHAMONI

JUDGE

26.10.2007