



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 126 of 2007**

**RICKSHAW TRAVEL (KENYA) LIMITED .....PLAINTIFF**

**VERSUS**

**SONALI KUMARI ZACHARIAH.....DEFENDANT**

**RULING**

This application under Section 3A of the Civil Procedure Act, Order 50 rule 1, Order 39 Rules 1, 2, 3 and 9 of the Civil Procedure Rules filed under certificate of urgency on 9<sup>th</sup> March 2007 seeks;

**(1) An interlocutory injunction order restraining the defendant and/or her employees and/or agents and/or assigns, and/or anybody from selling, disposing, transferring, charging, pledging, leasing, interfering with the mechanical condition of or whatsoever dealing adversely with motor vehicles registration numbers KAD 754V Mitsubishi Pajero, KAJ 020Q Skoda, KAU 480D Toyota Land Cruiser and KAM 385Q BMW pending the hearing and determination of this suit.**

**(2) An interlocutory mandatory injunction to compel the defendant and/or her employees and/or agents and/or assigns and/or anybody to return possession of the plaintiff's motor vehicles, mentioned above together with their original registration documents.**

The dispute between the parties herein largely relates to HCCC No.578/2006 filed on 23<sup>rd</sup> October 2006. That suit was filed by the present defendant to preserve her position as the Managing Director of **Rickshaw Travels (Kenya) Ltd and Flying Rickshaw Ltd**. The present defendant applied and obtained a temporary injunction to restrain her removal on 27<sup>th</sup> October 2006. She obtained an order of injunction stopping the implementation of the resolutions, which were the subject matter of challenge in that earlier suit.

On 31<sup>st</sup> January 2007 **Rickshaw Travels (Kenya) Ltd and Flying Rickshaw Ltd** made an application to discharge orders issued in favour of the plaintiff (defendant herein) on 27<sup>th</sup> November, 2006 and to preserve the assets and existence of the said companies. And on 1<sup>st</sup> February 2007 the parties through their respective Advocates appeared before his **Lordship Justice Ochieng** and recorded a consent inter alia;

**(1) The plaintiff (defendant herein) do step down as the Managing Director of Rickshaw Travel (Kenya) Ltd and Flying Rickshaw Ltd forthwith.**

**(2) That the plaintiff is not to interfere with the business and assets of the said companies.**

**(3) That however the plaintiff shall be entitled to continue to play her role as the director and**

**shareholder of the said companies.**

**(4) That the plaintiff be at liberty to seek alternative employment.**

Now the defendant is being accused without any right in law or authority of removing motor vehicles registration No.KAD 754V Pajero, KAU 480D, Land cruiser, KAS 020Q, skoda and KAM 385q BMW to a new company known as **Elite Travel Services Ltd.** which is in competition with the plaintiff herein. It is alleged that the defendant formed the said company after she voluntarily ceased to be the Managing Director of the plaintiff herein. It is also alleged that the vehicles belonging to the plaintiff is being used for the business and operation of the new company formed by the defendant. It is contended that although the defendant is a director and shareholder of the plaintiff company, nevertheless she does not own the vehicles which she is holding from the company. And that the plaintiff company is being deprived of the possession and use of its assets namely the said motor vehicles through illegal acts of detention by the defendant.

And since the defendant carries out or is engaged in a rival business, her use of the motor vehicles is prejudicial to the interest of the plaintiff, hence the plaintiff's business and operations have been greatly affected and may result in severe, substantial and irreparable loss, damage and injury. It is the prayer of the plaintiff that unless the orders sought herein are granted, the plaintiff's business will be completely and irretrievably destroyed wherein the plaintiff stands to suffer irreparable loss and injury.

The defendant maintains that she has an employee's lien over two motor vehicles. While motor vehicle registration No.KAU 480D was transferred to her with the full knowledge and consent of her husband, a director of the plaintiff company. The defendant's contention is that the plaintiff company is and has been since inception a family business where the directors are;

- (1) herself
- (2) her husband and
- (3) **Sara Prema Zachariah** who is a sister to her husband.

And that her husband who is estranged from her left the matrimonial home sometimes in 2005 and is currently living with another woman who is his mistress. That because of the estrangement, the husband and his sister have been using all manner of actions to harass, and intimidate with an intention to get rid of her from the Company, where she is a director and shareholder.

On motor vehicle registration KAU 480 she says that it was transferred properly to her name. That motor vehicle KAM 385Q is a saloon vehicle which was bought specifically for her as a director and shareholder of the Plaintiff Company, primarily used to transport her children to and from school. And that at the time of the purchase, her son made a contribution towards the purchase of the said motor vehicle. And it was registered in, the name of the plaintiff company for obvious maintenance reasons.

In respect of the two remaining vehicles, the defendant makes a defence in paragraph 26 and 27 of her replying affidavit in that as a result of the termination as Managing Director of the plaintiff company, which she was due to acrimonious family relationship and breakdown of the marriage, she is owed by the company a sum of Kshs.13,769,369/= which is counterclaiming from the plaintiff in this suit. And that pending settlement of her counterclaim, she holds a lien or in the alternative as a security motor vehicles registration numbers KAD 754V and KAJ 020Q. she also avers that the said vehicles are in her control and is being properly looked after with no possibility of the vehicles being wasted and/or disposed off.

The parties through their Advocates then made both written and oral submissions before me. I have taken into consideration all the relevant matters raised by the parties in their pleadings, subsequent affidavit and the able submissions made by the two Advocates. I have also considered all the authorities that were cited to me. Having done that, the issue for determination is;

- (1) whether the suit as filed by the plaintiff is res judicata and
- (2) whether the defendant is entitled to hold on to assets belonging to the plaintiff by exercising a right of lien.

Mr. Ongicho learned counsel for the defendant submitted that this suit is res judicata on the basis that the issues being raised here were the same issues raised by the plaintiff in Milimani High Court Civil case No.578/2006 **Sonali Kumari Zachariah vs Binoy Zachariah, Sara Prema Zachariah, Ismail Mawji, Rickshaw Ltd.** In particular the issues relating to motor vehicle registration No.KAU 480D which is an integral part of this suit, was severally raised by the plaintiff herein in the earlier suit.

It is the position of the defendant that the only reason why the plaintiff has filed the present suit is to circumvent the proceedings in the earlier suit, where all the issues at stake were either determined or pending for determination. According to Mr. Ongicho Advocate a matter that ought to have been raised in a previous suit but was not raised is res judicata if it is subsequently raised. And that the plaintiff is estopped by the principle of res judicata from re-litigating on the same issues that were either raised in the previous suit or ought to have been raised in that suit. In the previous suit in an application dated 3<sup>rd</sup> November 2007, filed by the plaintiff herein, it relied on the same grounds set out herein to try and set aside the injunction that the defendant had obtained in the previous suit. The defendant in support of that proposition relied in, **Civil Appeal No.80/1988, Pop-In (K) Ltd & others vs Habib Bank A.G. Zurich** where the Court of Appeal held;

**“where a given matter becomes subject of litigation in and of adjudication by a court of competent jurisdiction , the court requires the parties to that litigation to bring forward their whole case and will not permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest but which was not brought forward, only because they have....omitted part of their case. The plea of res judicata applies except in special cases not only the points upon which the court was actually required by the parties to form an opinion and pronounce judgement but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time”.**

The defendant’s Advocate also relied on the case of **Mburu Kinyua vs Gachini Tuti (1978) KLR 69**, where the Court of Appeal held that the plea of res judicata applies not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgement but to every point which properly belonged to the subject of litigation. It is the contention of the defendant that the issues relating to the subject motor vehicles were raised and the court formed an opinion on it by issuing various orders to protect the motor vehicles or assets of the plaintiff company, hence the preliminary objection filed on 7<sup>th</sup> June 2007 is well founded and should be allowed wholly.

The position of the plaintiff is that the previous suit was filed by the current defendant in order to preserve her position as the Managing **Director of Rickshaw Travels (Kenya) Ltd** by way of an injunction restraining the implementation of certain resolutions of the board of directors. According to the plaintiff’s Advocate, the subject matter of the two suits are distinct and different, therefore one of the essential ingredient of res judicata in that, matters in issue in the two suits must be the same is missing.

Whereas in HCCC No.578/2006, the defendant herein sought to challenge her removal as the Managing Director of the plaintiff herein and safeguard her position in the plaintiff company by seeking an injunction to stop the plaintiff from effecting the resolutions and minutes of the meeting held on 25<sup>th</sup> October 2006, the present suit deals with the plaintiff’s action to restrain the defendant from illegally transferring motor vehicles subject of this suit, to herself to the detriment of the company. The plaintiff contends that, the ownership of the motor vehicles were never an issue in HCCC No.578/2006 and neither is the defendant’s challenge upon the resolutions and minutes removing her as a managing director of the plaintiff company an issue in the present suit. The two suits are therefore clearly distinct and the plea of res judicata by the defendant is misconceived. And in any case the former suit was never heard and fully determined on its merit but was determined through a compromise, therefore the fundamental ingredient

that the former suit must have been heard and finally determined is also missing.

In conclusion the plaintiff contends that the parties are litigating in a different capacity in the two suits. In HCCC No.578/06 the defendant herein was suing as a managing director of the plaintiff company and **Flying Rickshaw Ltd.** In the present case the defendant has been sued as an ordinary director as she is no longer a managing director of the Plaintiff Company following the consent order recorded before **Justice Ochieng** on 1<sup>st</sup> February 2007. The plaintiff's Advocate referred me to the case of **Omondi vs National Bank of Kenya & 2 others (2001) K.L.R. 579** where **Ringera J** (as he was then) held;

**“I have concluded that the present suit is not res judicata for the following reasons First as regards HCCC No.350/1998, I accept Mr. K’opere submission that the same having been withdrawn rather than determined on its merits, there would be no basis of pegging the plea in bar thereon for it is a fundamental condition precedent to this plea in bar that the previous suit should have been heard and finally determined by a court of competent jurisdiction. Secondly, I accept the plaintiff’s submissions that HCCC No.867/2000 involved a different matter from what is at stake in the present suit and that the first plaintiff therein who is also the first plaintiff herein was litigating in a different capacity”.**

Now let me start by saying that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim were litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court. It is also clear in my mind that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. In essence res judicata means a matter adjudged or a thing judicially acted upon or decided by a court of competent jurisdiction. It means the decision made between the parties in the previous is conclusive as to the rights of the parties and their privies so as to constitute an absolute bar to a subsequent action involving the same claim.

As a matter of good practice parties are not allowed to bring in another way and in the form of a new cause of action, transaction which he/she has already put before a court of competent jurisdiction in an earlier proceedings and which has been adjudicated upon in order to achieve a different result from the one earlier reached by the court. The identity of the cause of action, persons and parties to action is a factor that enables the court whether the plea of res judicata is justified. That courts should correctly decide cases before them on their merits is of course of the highest importance, so that a plea and/or bar of res judicata to succeed. The issue must have been between the same parties in a matter directly in question in another suit/court. In essence parties must have been litigating under the same title in the former suit.

In my view HCCC 578/2006 involved a different matter from what is at stake in the present suit and the parties were litigating in a different capacity. The subject of the previous suit is distinctly and completely different from the dispute meant for determination in this suit. The earlier suit was initiated by the present defendant in order to protect her status at **Rickshaw Travels (Kenya) Ltd.** while the present suit is concerned with the way the assets of the plaintiff company has to be used and controlled by persons having legal or beneficial interest in the company. It is also my decision that the issue of appropriation of the assets of the plaintiff's company was not at stake substantially and directly in the earlier suit.. In any case the previous suit was not heard and determined finally on merit by a court of competent jurisdiction.

I am in agreement with **Mr. Ongicho** Advocate that according to the consent order recorded before court on 1<sup>st</sup> February 2007 in the previous suit contained an order that the present defendant ceases to interfere with the assets of the plaintiff company, but the order did not specifically mention the assets which are the subject of the present litigation. I accept the explanation given by the plaintiff that at the time the order was recorded, the illegal transfer and/or attempt to transfer the subject motor vehicles was not within its knowledge. In my view the subsequent conduct of the plaintiff in dealing with some of the assets of the plaintiff company founded a distinct cause of action in favour of the plaintiff. I think it is right to conclude that the legality, control, management and appropriation of the company's assets was never an

issue in HCCC No.578/2006. The said suit merely addressed the minutes and resolutions passed against the interest of the present defendant. It is therefore abundantly clear that HCCC No.578/2006 involved a completely different and distinct matters from what is at stake in the present litigation. The parties were substantially different, the issues were radically different and above all the parties are litigating over a new cause of action in a different capacity, therefore the plea of res judicata does not apply to the present matter. I refuse to be persuaded by the submissions put forward by the defendant. I can say the objection and the subsequent submission relating to the plea of res judicata is misconceived.

In my humble opinion a party is allowed to bring successive actions in respect of the very same circumstances provided those circumstances give rise to a different cause of action. However in the present suit the matter/subject in issue is totally different from the issues that were meant for determination in the earlier suit. In fact the only common issue in both matters is the effects and actions of an estranged couple using all methods to displace each other from their respective position. In the premises the plea of res judicata is without merit and is rejected as having no legal basis.

The other issue central to the determination of this application is whether the defendant can be allowed to sustain the defence she put forward for her action concerning some of the assets of the company. It is the contention of the plaintiff/applicant, that the defendant as a director and shareholder in the plaintiff company has no right to the plaintiff's assets except for the value of the shares she owns. And that the purported claim to the assets of the plaintiff company lacks any basis in law and in fact. It is the case of the plaintiff that it is a fundamental principle and practice of company law that all decisions affecting the disposition of a companies assets can only be validly done and effected through resolutions passed by the company's Board of Directors. And since no resolutions was passed by the board of the plaintiff Company authorizing the defendant to take possession and transfer any of the company's assets, her action amounts to an outright illegality.

The defence put forward by the defendant is as follows: That she is holding two of the motor vehicles in exercise of an employee's lien over the assets of the plaintiff in lieu of her payments which is outstanding in her counterclaim against the plaintiff Company. Secondly that being a shareholder of the plaintiff Company which is a family business she has a right to take possession of some assets of the company in view of the hostility depicted by her husband against her and her children.

No doubt the defendant has a counterclaim of Kshs.13,769,367/= against the plaintiff being the arrears of salary, retirement benefits and leave not claimed. According to the defendant, it is only fair that she be allowed to exercise her right of lien, which she has already asserted on the 4 motor vehicles until her claim is paid. And that it would be unjust to grant the plaintiff a mandatory injunction for the return of the motor vehicles or any of them while her claim against the plaintiff remains unpaid. That would amount to unjust enrichment for the plaintiff to want to keep the money and the cars. She also contends that two of the motor vehicles claimed by the plaintiff belongs to her and these vehicles are KAU 480D and KAM 385Q.

Let me start by saying that it is a basic principle of company law, which needs no authority that a company has a distinct and separate personality from its shareholders and directors even where the directors happen to be close family unit. In my understanding, company is legally run through the board of directors and unless there is evidence to show that the powers of the board had been suspended or taken over by a legal authority then no person has the capacity and/or authority to deal with the assets of the company in a manner contrary to the intentions of the board of directors. In essence the property of the company is separate and different from that of its shareholders and directors.

No doubt the defendant was removed as a Managing director of the plaintiff Company. No doubt the defendant is a director of the plaintiff Company despite the protracted family feud created by the estranged relationship between her husband and her husband. It must be understood that the problems within the family of the defendant is not a blanket reason to engage the company into the marriage difficulties between the husband and the wife. In my opinion one shareholder however aggrieved he may be, cannot exercise a proprietary rights to the Company's property in lieu of the shares he/she owns in the company or that he/she has a claim against the company. In this case there is nothing to show that the

corporate existence of the company has been destroyed or that the board of directors has become functus officio, because of the occurrence or existence of a particular act or event. The company is not under receivership and there is no prospect that it is about to be put under liquidation, so as to say the defendant's action is meant to protect her interest in the company which is about to go under. There is no indication that the defendant is exercising some of the residual powers of a director/shareholder on interim basis and/or measure pending the resolution of a detrimental event. I do not think the reasons given by the defendant is a basis and/or justification to usurp the powers of the board of directors of a solvent and liquid Company.

Further, there is no evidence to show that the management of the plaintiff Company are unable or ceased to act in the name of the company to make me believe that the assets is being dissipated or wasted in a manner contrary to the interest of the defendant. In any case there is no documentary evidence to show that the company would be unable to satisfy any decree that might be obtained by the defendant or that the company's financial condition is not healthy to warrant a run on its assets. According to the defendant's own evidence, the company has substantial cash within its disposal and from the evidence exhibited by the defendant, the financial condition of the company can be described as being sound and healthy. It is therefore, my view that though the defendant has a counterclaim against the defendant, the evidence available gives an indication that the plaintiff would be in a position to satisfy any decree determined in favour of the defendant. It suffices to say that the claim of the defendant is based on what she thinks is her legal entitlement. It is a right which must await determination of the court. It is a right based on allegations which has to be proved and determined by the court. While the right of the plaintiff is real and known. The right of the plaintiff is uncontested even by the defendant. The protection of the rights of the plaintiff protection accorded to the defendant by virtue of her legal and beneficial interest in the assets of the plaintiff. This court is therefore unable to understand the source and basis from the defendant can hold on to the assets of the company. Simply having an anticipatory right against the company or over the assets of the company cannot create a right and/or power which the defendant purports to exercise.

The respondent may feel aggrieved to have been evicted from the management of the company in somewhat unfair manner. The company may be a family business, the husband of the defendant may have moved out of the matrimonial home to reside with an animal called mistress, but does not give the defendant an opportunity to run away with some of the assets of the company. I think that is contrary to the well settled principles of company law.

As stated, there is no evidence to show that the management of the plaintiff company are unable or ceased to act in the best interest of the company. Let me also add that a company operates through its board of directors and unless there is documentary evidence to show that an investment done by the defendant at the time, she was in charge of the company is deteriorating as a result of the actions of the current board of directors, she cannot be allowed to interfere in the way the company is managed. The defendant voluntarily resigned as a Managing Director of the plaintiff company and the fact that she is not at the helm of the company does not make the other remaining managers of the company to have no capacity to defend, safeguard and protect the assets of the Company from intruders. I think a dispute concerning a husband and wife who are shareholders and/or directors of a Company cannot disable the corporate identity of the Company concerned. What I am saying is that, the assets of a particular company is not free for all because a dispute arose between the shareholders and the Managers of the Company.

If the respondent feels aggrieved as to the way the company is managed she has a right to start the necessary proceedings to salvage any rights allegedly infringed by any party in control of the company. However it is not open for her to take what she feels is remedial measures i.e. to keep some assets as hers pending determination of a dispute, dissolution or even liquidation of the Company. I think the defence put forward by the defendant in her possession of some of the motor vehicles cannot avail her any escape route from the principles laid down in **Solomon vs Solomon**. I therefore think that the defendant definitely lacked legal competence and/or authority to usurp the powers of the board of the plaintiff Company in the appropriation or otherwise of the Company assets. The company has a legitimate right to take action so as to enforce its legal rights or mandate.

The plaintiff is seeking a mandatory injunction directed against the defendant to make her release all the company assets in particular the 4 motor vehicles subject of this application. On 9<sup>th</sup> March 2007, this court gave an interlocutory injunction *ex parte* in terms;

**“that an interlocutory injunction order be and is hereby issued restraining the defendant and/or her employees and/or agents and/or assigns and/or anybody from selling, disposing, transferring, charging pledging, leasing, interfering with the mechanical condition of or whatsoever dealing adversely with motor vehicles registration numbers KAD 754 Mitsubishi Pajero, KAJ 020Q Skoda, KAU 480D Toyota Land cruiser and KAM 385Q BMW pending the interparties hearing of this application”.**

The dispute in this application concerns 4 motor vehicles and it is important to deal with each motor vehicle to understand the correct position and circumstances of possession before ownership is determined.

With regard to motor vehicle registration number KAU 480D, it is pertinent to note that it is registered in the names of the defendant. According to the defendant the transfer and registration was done with the full knowledge and consent of **Mr. Binoy Zachariah** and not done in an underhand manner as alleged by the plaintiff. The plaintiff’s position is that decision affecting the dealings of a property or asset of the company can only be validly done and effected through a board resolution, authorizing any party to transfer any asset of the company into a particular names. And that is not the case here in respect of motor vehicle registration No.KAU 480D. Hence in the absence of such a resolution, the purported transfer is null and void *ab initio*.

Having considered the oral or documentary evidence produced by the parties, I see no reason to interfere with the possession and ownership of that motor vehicle. There is a transfer of change of name concerning that motor vehicle signed by **Mr. Binoy**. There is petty cash voucher for a sum of Kshs.5,915/= allegedly signed by **Mr. Binoy** indicating transfer of change of names from **Rickshaw Travels (Kenya) Ltd.** to the defendant herein. In the premises I am satisfied with the explanation given by the defendant as concerns her possession and ownership. I therefore make no orders concerning that particular motor vehicle.

The second vehicle is KAM 385Q BMW. The defendant says the said motor vehicle was bought specifically for her as a director and shareholder of the plaintiff company. No doubt the defendant is still a director and shareholder of the plaintiff company. There is also ample evidence to show that the said motor vehicle is used to transport the children of the defendant and **Mr. Binoy Zachariah**. In my humble view that was not disputed by **Mr. Binoy Zachariah** and the fact that the said motor vehicle is registered in the names of the plaintiff cannot deprive the family of the defendant the right to use that motor vehicle. It is clear in my mind that the defendant and her two children have both legal and beneficial interest in that motor vehicle. There is also uncontroverted evidence to show that the son of the defendant contributed to the purchase of the said motor vehicle for the sake of his mother. And no doubt the children are with the custody and control of the defendant. I think it is not unreasonable to give her the right to use that motor vehicle for her benefit and for the benefit of the children from the marriage, that is the cause of this protracted dispute. To deprive a motor vehicle bought for the defendant in her capacity as a director and shareholder of the plaintiff company simply because of the current prevailing circumstances would amount to an injustice. I also think as a mother of the children of **Mr. Binoy**, she is entitled to the use and possession of that motor vehicle. I therefore give no orders concerning that motor vehicle. I refuse to be persuaded by the emotional allegations of Mr. Binoy.

In respect of the two remaining motor vehicles, it is beyond doubt that the possession of the defendant is in contravention of the law. The plaintiff has established to my satisfaction that it is the owner of the motor vehicles in question. And hence it is entitled to an order of injunction to protect and preserve the same from injury and waste. Having obtained an advantage by such wantonly unlawful acts of depriving the plaintiff, the respondent ought not to be allowed by court to retain or maintain that benefit, therefore possession must revert to the status as it existed before the unlawful taking over of the company’s assets by the respondent. It was not done with any colour of right. Therefore the orders sought can be granted

to preserve the assets of the plaintiff Company.

In **Civil application Nairobi 186/92 Kamau Muchina vs The Ripples Ltd** the Court of Appeal held;

**“that it is fallacious for a person who forcibly and riotously enters premises to maintain that his occupation of these premises is status quo which must be maintained and not disturbed, which of course in very many case is the object of a temporary injunction to keep things in status quo so that the property in question is maintained, as far as possible intact until the final determination of the suit. The status quo was not that which existed after the intruder’s illegal acts but that which existed before hand”.**

In my understanding the conduct of the defendant as concerns motor vehicles registration numbers KAD 754V, Mitsubishi Pajero and KAJ 020Q Skoda falls within the category aptly described by the Court of Appeal in the above case as forcibly and riotously gotten from the rightful owners. I think the state of affairs subsisting before the present dispute is what the court would usually protect. The law is clear that an intruder cannot be allowed to maintain his position obtained in contravention of the law and equity.

I appreciate that in granting mandatory injunction, the court should be reluctant save in special circumstances and in the clearest of cases. I think this case as far as the two motor vehicles is concerned falls within that category. Having exercised tremendous caution, I am satisfied that the orders sought by the plaintiff as it concerns motor vehicle registration Nos. KAD 754V and KAJ 020Q ought to be granted. The grant of the said order would not result in any injustice to the defendant and through her own evidence, the liquidity of the plaintiff company is not in doubt, therefore damages would be adequate remedy in case that possibility arises.

**In conclusion the preliminary objection by the defendant dated 6<sup>th</sup> June 2007 is dismissed and the plaintiff’s application is allowed in terms of prayer No.5 is granted but limited to motor vehicles registration No. KAD 754V Mitsubishi Pajero and KAJ 020Q Skoda. All other prayers in the application dated 9<sup>th</sup> March is disallowed. The costs of the application and the preliminary objection shall be in the cause.**

Dated and delivered at Nairobi this 9<sup>th</sup> day of November, 2007.

**M. A. WARSAME**

**JUDGE**