



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1860 of 1993**

**G.C. MURAGURI.....PLAINTIFF**

**VERSUS**

**MAGU WANGAI T/A ROSAM ENTERPRISES.....DEFENDANT**

**J U D G M E N T**

The date for the hearing of this suit was on 22<sup>nd</sup> May 2007 taken by consent of Mr. Kinuthia Wandaka, counsel for the Plaintiff, and Mr. Chege, counsel for the Defendant, but on the hearing date 7<sup>th</sup> November 2007 only Mr. Wandaka and his client appeared before me for the hearing. As I had no information from the Defendant or his Counsel and upon insistence by Mr. Wandaka, I proceeded to hear the case in the absence of the Defendant and his advocate.

From the evidence adduced before me, the Plaintiff told the court that in 1993 he was the Managing Director and also share holder of a company called Citizen Equipment And Stationary Limited. Its certificate of its incorporation No. C24399 dated 3<sup>rd</sup> July 1982 in Exhibit No. 1. The Defendants are Auctioneers and on 16<sup>th</sup> February 1993 they went to the Plaintiff at the office of Citizen Equipment and Stationary Limited, Kilimbogo House along Mfangano Street in Nairobi to distress Citizen Equipment And Stationary Limited for its failure to pay rent arrears upon instructions by J.K. Mugo Kangori who were Land Lords. They distressed the Plaintiff's motor vehicle, a long where land rover registration No. KSY 327 which the Plaintiff had parked about 10 metres away from the office/shop along the street.

The Plaintiff produced the vehicle logbook as P. Exhibit 2 in his name and not in the name of the company. The Defendants issued an inventory dated 16<sup>th</sup> February 1993, Exhibit 3.

The Land Lord's Advocates, M/s Kamau Kuria & Kiraitu, wrote to the Defendants on 26<sup>th</sup> February 1993 directing the Defendants to release the motor vehicle, but the Defendants refused. The Plaintiff's present lawyers wrote also to the Defendant but the Defendants refused to release the motor vehicle – see Exhibit 4 and Exhibit 5.

On 1<sup>st</sup> April 1993 the Defendants advertised the motor vehicle for sale – see Exhibit 6. But on 3<sup>rd</sup> April 1993 there was another letter from the Defendant's Advocates again directing them to release the motor vehicle and on 5<sup>th</sup> April 1993 the Plaintiff's Advocates wrote another letter to the Defendant to release the motor vehicle. See exhibits 7 and 8.

The Defendant refused and sold the motor vehicle which the Plaintiff is therefore saying was sold unlawfully because the company against which the Defendant was recovering a different legal entity from the Plaintiff even if there was rent arrears which the Plaintiff also says was not there.

He says the value of that motor vehicle at that time was Kshs.350,000/=. He does not have a valuation report as the motor vehicle was sold before it was valued.

The plaintiff asks for damages, the value of the motor vehicle at Kshs.350,000/= unlawful distress Kshs.400,000/= and Kshs.250,000/= exemplary damages to express the court's displeasure for the

unlawful act – plus costs.

In the absence of a defence and evidence to challenge what the Plaintiff has told this court, I am satisfied the Plaintiff has proved his case against the Defendant on the balance of possibilities. I will not however grant the Plaintiff specifically under prayer (a) namely “damages” as I feel the awards under the other heads as specified above in this judgment are enough.

Accordingly, judgment be and is hereby entered for the Plaintiff against the Defendant as follows:-

Value of the motor vehicle - Kshs.350,000/=

Unlawful distress - Kshs.400,000/=

Exemplary damages - Kshs.250,000/=

The Defendant to pay costs of this suit to the Plaintiff.

**Dated and delivered at Nairobi this 5<sup>th</sup> day of December, 2007.**

**J.M. KHAMONI**

**JUDGE**