



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
Civil Case 523 of 2005

CHRISTOPHER MAKANGA

FREDRICK MULANYA

EDWARD OSANO

WINFORCE ATONGA

EVANS MUGASIA PLAINTIFFS

VERSUS

BLUESHIELD INSURANCE CO. LTD.

MUGANDA WASULWA t/a

KEYSIAN AUCTIONEERS DEFENDANTS

R U L I N G

In a Plaint dated 21.9.2005, and filed on 22.9.2005, the plaintiffs aver that at all material times they were employees of the 1st defendant holding various managerial positions but have since left the said employment. The plaintiffs further state that during their employment with the 1st defendant they took out car loans amounting to Kshs.490,000/=, Kshs.850,000/=, Kshs.750,000/=, Kshs.750,000/= and Kshs.500,000/= respectively which loans were repayable monthly through fixed salary deductions. After the plaintiffs ceased employment with the 1st defendant, they intimated their desire to continue defraying their monthly outstandings in terms of the loan agreements but the 1st defendant did not respond and instead on 20.9.2005 instructed the 2nd defendant to attach and/or repossess all the motor vehicles purchased by the plaintiffs being motor vehicle registration Nos.KAQ 841 X, KAS 270 K, KAT 903 A, KAS 288 F AND KAL 936 J.The plaintiffs' contention is that the threats to repossess the said motor vehicles by the defendants is illegal, irregular and in breach of the provisions of loan agreements between the plaintiffs and the 1st defendant as the said agreements did not provide for repossession in the event of cessation of employment, nor did the parties thereto execute and register any chattels mortgages to

warrant the threatened repossession.

Simultaneously with the filing of the Plaint, the plaintiff filed an application for interlocutory injunction to restrain the defendants from attaching, repossessing, disposing of, transferring or in any way, interfering with plaintiffs' right of ownership, possession, use and disposal of the plaintiffs' said motor vehicles pending the hearing and determination of this application and suit.

The application is expressed to be under Order XXXIX Rules 1 and 2 of the Civil Procedure Rules, Sections 3A and 63 (c) and (e) of the Civil Procedure Act and all enabling provisions of the law.

The application is made on the following primary grounds:-

- (1) That the defendants are illegally and irregularly purporting to attach or repossess the plaintiffs' said motor vehicles by proclaiming the same yet the same belong to the plaintiffs.**
- (2) That there was no stipulation in the loan agreements entitling the 1st defendant to repossess or attach the plaintiffs' said motor vehicles upon the plaintiffs ceasing employment.**
- (3) That no chattels mortgages, under the Chattels Transfer Act Cap 28, Laws of Kenya were executed and registered in the 1st defendant's favour to warrant the purported repossession hence the same is illegal and irregular.**
- (4) That the plaintiffs are Business Managers and if their said motor vehicles are attached or repossessed, they will suffer irreparable harm incapable of financial redress.**

The application is supported by an affidavit sworn on 2.9.2005 by the 1st plaintiff who says he has full authority to swear the affidavit also on behalf of the other plaintiffs. The application is opposed. There is a Replying Affidavit sworn on 14.10.2005 by one James Gathairu, the 1st defendant's Chief Accountant.

The application was canvassed before me on 9.12.2005. Having considered the application, the affidavits on record, the submissions of Counsel on record, I take the following view of the matter. The principal issue for determination in my view is whether or not, under the car loan agreements, the defendant is entitled to attach or repossess the motor vehicles in question. I remind myself that I am not hearing the entire case at this stage. I should therefore not make any definitive findings of fact or law. I have read copies of the car loan agreements, exhibited at "CM1" in the 1st plaintiff's affidavit aforesaid. Clause 6 of the said agreements is in the following terms:-

"6. That should the employee cease being an employee of the Company (Employer), then automatically the interest rates shall be based on the prevailing Bank rates."

There is no provision in the loan agreements under which the defendant may repossess or attach motor vehicles upon the plaintiffs ceasing to be employees of the 1st defendant. But pursuant to the provisions of Clause 6 quoted above, the defendant is automatically entitled to charge interest rates based on the prevailing Bank rates with effect from the time the plaintiffs ceased being employees of the 1st defendant.

The 1st defendant's reasons for the threats to attach and repossess the said motor vehicles appear to be that the plaintiffs are in breach of Clause 4 of the said car loan agreements and further that since July 2005 the plaintiffs have stopped remitting loan installments and further that the plaintiffs are using the said motor vehicles for the benefit of a competitor.

Clause 4 of the said loan agreements reads

"That the employee shall provide the Log Book plus a blank transfer form signed as security

of the loan to be deposited with the employer.”

The 1st defendant has not exhibited a written demand for the documents stated in the said Clause to support the allegation that the plaintiffs failed to comply. In any event, failure to comply in my view, would not entitle the 1st defendant to the attachment or repossession of the motor vehicles.

With regard to the allegation of failure to make monthly repayments, the plaintiffs state that upon ceasing to be the 1st defendant’s employees, they instructed their advocate to write to the 1st defendant indicating their willingness to continue servicing the said loans as per Clause 6 thereof but the 1st defendant did not respond. The plaintiffs have exhibited copies of the said letters as “CM2”. The 1st defendant, a part from the averment that the method proposed for settlement of the loans was contrary to the agreements has not exhibited a response to the proposal made by the plaintiffs through their advocates. In my view, the plaintiffs’ proposal did not suggest breach of Clause 6 of the loan agreements.

As regards the complaint that the plaintiffs are using the motor vehicles for the benefit of a competitor, I detect no such restriction in the loan agreements and the complaint is in my view, without merit.

From my above findings, it is clear that the plaintiffs have shown on a prima facie basis that the 1st defendant has no legal basis to entitle it to attach or repossess the said motor vehicles. The plaintiffs have therefore passed the first hurdle in their quest for interlocutory injunctive relief. They have, in my view established a prima facie case with a probability of success at the trial. But is the plaintiffs’ probable injury incapable of being adequately compensated in damages should they succeed at the trial? I am so persuaded. The plaintiffs say that they are business managers and their operations involve a lot of movements and marketing. It is obvious that attachment and repossession of the motor vehicles would cripple the plaintiffs. A court of equity would frown upon such a result, especially as the plaintiffs are keen to perform their part of the bargain. This finding is fortified by the filing of a counter claim by the 1st defendant for the value of the said motor vehicles.

In the end, I allow the plaintiffs’ application dated 21.9.2005 in terms of prayer 3 thereof. The interlocutory injunction is granted on the terms that each of the plaintiffs’ files a written undertaking as to damages. They should do so within 7 days of the making of this order.

Costs shall be in the Cause.

Either party is granted liberty to apply.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 31st day of January 2006.

F.AZANGALA

JUDGE

While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-Non Commercial-ShareAlike 3.0 Unported License](#), the text of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions.
Read our [Privacy Policy](#) | [Disclaimer](#)