



REPUBLIC OF KENYA

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

**Civil Suit 133 of 2006**

**CHOGI'S GARAGE LIMITED.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL .....DEFENDANT**

**RULING**

The defendant had a contract with the firm of Krishan Behal & Son for the construction of a road in Maua area.

The said firm seemed to have reneged from that contract and accordingly the defendant terminated the said contract. One of the terms of the said contract was that the defendant was entitled to take possession of the property of the said firm on termination.

It seems that the sole proprietor of Krishan Behal & Sons passed away. His administrators instructed the plaintiff to remove some equipment from the Maua site on behalf of the estate of Sunil Behal (deceased).

In order to carry out those instructions the plaintiff went on to the site using a motor vehicle, prime mover registration No. KVT 326 and low – loader registration No. ZA 5758.

On arrival on the site, on the 24<sup>th</sup> November 2005 the defendant impounded the aforesaid motor vehicles and alleged that they belonged to Krishan Behal & Son and were liable to be impounded under the aforesaid contract. One of the plaintiff's employees was temporarily arrested on allegations of theft but the police did not prefer any charges against him and he was eventually released.

The plaintiff's attempts to have their vehicles, the prime mover and the low loader, released by the defendant has not borne fruit. As a consequence the plaintiff has moved this court by an application seeking the following order against the defendant.

**“The Respondent do release the prime mover registration No. KVT 326 and low – loader registration NO. ZA 5758 forthwith and in any event within seven days of the issuance of the court order.”**

The plaintiff in support of the application exhibited documents which show that the aforesaid motor vehicles was sold to the plaintiff, through tender, by South Nyanza Sugar Company Ltd. The plaintiff also exhibited Logbooks for both motor vehicles, which reflect the plaintiff's name as the owner.

Faced with that overwhelming evidence the defendant submitted that it had a contract with Krishan Behal & Sons for construction of a road, that the said agreement provided that if there was termination of that contract whatever property, of the Krishan Behal & Sons, that was to be found on site was to become the property of the defendant. The defendant admitted that a prime mover and a low loader had been **'arrested'** and at the time that the said vehicles had no registration number. The deponent of the affidavit in reply stated that these vehicles plus the other items of property on site **“cannot be released until all formalities of a terminated contract are concluded.”** The defendant faulted the logbook, which only reflected the plaintiff's name as at 10<sup>th</sup> February 2006, whereas the vehicles were detained by the defendant on 25<sup>th</sup> November 2005.

Plaintiff in response to the latter submission stated that it has been authorised, by the Registrar of Motor vehicle, to use registration number plates KG 3407, which plates were used on the prime mover and low loader when it was detained by the defendant. The plaintiff submitted that the vehicles detained by the defendant are the same vehicles, which were registered in the plaintiff's name. The plaintiff explained the long process of registration was due to the change of registration from parastatal's number plates to civilian number plates. The plaintiff also

stated that delay in registration was also caused by the repairs, which needed to be carried out on the vehicles because they had been purchased in a dilapidated state.

Plaintiff's counsel submitted that the defendant did not state that the vehicles in question belonged to it and in view of the fact that the contract, which the defendant relied upon, to detain the vehicle, was between the defendant and Krishan Behal & Sons, that the defendant should be ordered to release those vehicles.

I wish to start by defining the word advocate. The Black Law Dictionary defines an advocate as:

**“A person learned in the law and duly admitted to practice, who assists his client with advise, and pleads for him in open court.”**

I start by that definition because the court was disappointed with failure of defence counsel to adequately state the law that relates to the defendant.

The plaintiff's application seeks a mandatory injunction for the release of the motor vehicles, aforesaid, by the defendant. In other words the plaintiff seeks that injunction against the government. The plaintiff argued that an injunction could be issued against the Government, without giving authority to back that assertion.

Clearly section 16 Government proceedings Act (Cap 40) prohibits the issuing of injunction against the Government. Justice Visram in the case ROYAL MEDIA – V – TELKOM KENYA [2001] E A stated

**“.....in my view rightly, so that there can be no injunction against the Government. Where there is a cause of action directly against the Government, there can be no injunction. The appropriate remedy in that case would be to seek declaratory relief against the Government. This is founded on the principles that the King cannot do wrong and that the King cannot be sued in his court”.**

The judge proceeded to find that the servant of the Government could not **“hide behind the immunity of the Government.”**

This information and argument is what the court would have expected the defendant's counsel, who is a state counsel, to bring out but he did not.

The plaintiff is entitled to obtain a declaration in respect of those motor vehicles but not an order for the release of the same.

The plaintiff did not pray for those orders and accordingly the court cannot grant orders not sought.

The courts finding being that the court is not empowered to issue an injunction against the Government the plaintiff's application must fail.

The orders of this court are that the plaintiff's application dated 17<sup>th</sup> March 2006 is dismissed with costs being in the cause.

**MARY KASANGO**

**JUDGE**

Dated and delivered this 23<sup>rd</sup> May 2006.

**MARY KASANGO**

**JUDGE**