

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1345 of 2005

DEDAN MWANGI THUKU.....
.....PLAINTIFF

VERSUS

KIAMURIUKI BUS SERVICES LTD.....
....DEFENDANT

RULING

By Sale Agreement dated 6th December 2004 the defendant offered to sell and the plaintiff agreed to purchase motor vehicle registration No. KAQ 274 Z at a price of Shs.2,500,000/=. The plaintiff paid Shs.1,000,000/= and the motor vehicle was released to him. It was agreed further that the balance of the purchase price could be settled by monthly instalment of Shs.100,000/=. After 3 months the said motor vehicle was involved in an accident and was towed to the garage of the defendant for repair but after repair the defendant declined to release it to the plaintiff allegedly for non payment of the monthly instalment as earlier agreed. The plaintiff filed this application by chamber summons dated 8th November 2005 seeking the following orders:-

1. That the respondent his agents, servants, and/or employees be restrained by temporary injunction from using it in matatu business or in any way dealing with the motor vehicle registration No. KAQ 274 Z till further orders of this court or till the determination of this application.
2. That the motor vehicle registration No. KAQ 274 Z be immobilized and be kept at Leally Cold Storage in Industrial Area and the Plaintiff/Applicant do pay storage charges till the hearing and determination of this application.
3. That the OCS Central Police Station be ordered to enforce the orders of the Honourable court.
4. That the costs of this application be provided for by the respondent.

The application is based on the ground that the applicant bought the subject motor vehicle from the respondent; that the respondent has repossessed the subject motor vehicle, that the Sale

Agreement dated 6th December 2004 is irrevocable; that the respondent is negotiating with another buyer for sale of the subject motor vehicle, and that the respondent has used arrogant criminal and at material times shameful, degrading behaviour towards the applicant.

The application is supported by sworn affidavit in which the applicant has deponed on similar facts as those contained in the plaint.

The respondent in opposition to the application has filed a replying affidavit in which he has deponed that the applicant has breached the Sale Agreement in that he had only paid one instalment and was in arrears in the sum of Shs.200,000/- and that demand notice had been served upon the applicant.

The applicant admits that he fell into arrears which the subject motor vehicle was involved in an accident and had taken it for repair which the respondent converted it into his own use after repair.

From foregoing, the orders sought by the applicant are not tenable at this stage. The applicant should wait until the full trial of the suit and if the suit is decided in his favour he will be entitled to damages.

The application therefore is dismissed with costs.

Dated and delivered at Nairobi this 20th day of June 2006.

J.L.A. OSIEMO

JUDGE