



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 787 of 2004

CHULU TOKEN ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

EMILY SIELE.....1ST DEFENDANT

EDUCATION MEDIA CORPORATION.....2ND DEFENDANT

RULING

The Applicant by its application of the 9th February 2005 seeks to set aside my orders made on 1st December 2004 and 27th January 2005.

The orders sought to be set aside are in the following terms:

1. That the motor vehicle registration number KAR 088A be released to the 2nd Defendant Education Media Corporation, for repair and that thereafter it be stored in Express Transport Ltd.
2. That the storage charges be paid in the first instance by the 2nd Defendant but subject to access.
3. That the Plaintiff do have a right to inspect the vehicle.

The orders granted on 27th January 2005 were as follows:

2. That an order do issue directed at the Officer commanding Police Division Kilimani Division, Nairobi to forthwith release to Education Media Corporation's Local Representative Livingstone Kaniaru the motor vehicle registration number KAR 088A Toyota Pick Up as directed by this Honorable Court on 1st December 2004 without demur and without imposing any conditions for his compliance.
3. That an order do issue directed at Officer Commanding Police Division Nairobi to show cause why he should not be committed to jail for contempt of court by refusing to abide by the terms of the two orders of this Honorable Court:-
 - i. The one issued on 1st December 2004 directing that the motor vehicle registration number KAR 088A be released to the 2nd Defendant and
 - ii. The one issued on 3rd September 2004 staying the earlier orders of this Honorable Court issued on 22nd July 2004.

The Applicant relied on the grounds in the application and the supporting affidavit of Lombo Simba Lombo.

In the Plaintiff, the Plaintiff of which Lombo Simba Lombo claims that it is the owner of the motor vehicle in question and that the Defendant Emily Siele borrowed the vehicle but failed to return it and the Plaintiff claims its return.

The Defence filed claims that one Livingstone Kiniaru approached the 1st Defendant as a representative of Education Media Corporation (EMC) and she agreed to store it at Lokichoggio in Vodi's stores. Then subsequently Mr. Kiniaru took the vehicle away. Subsequently EMC became a party to this suit as a 2nd Defendant.

The parties are therefore the Plaintiff and the two Defendants. It appears that the heading to this application is incorrect and should be amended accordingly as Mr. Lombo is not a party to this suit so far as I can see from the record.

It is the Applicant's submission that EMC does not exist as a legal entity. Reference was made to the Constitution of EMC and other documents which are annexed to an affidavit of one Peter Storin sworn herein on the 9/8/2004 from the documents it appears that EMC is a corporate body incorporated in the USA under the Law of the Commonwealth of Virginia. Having perused these documents I am satisfied that EMC is a body corporate which can be sued and is a proper party to these proceedings.

With regard to the grounds for this application, firstly, Mr. Kiniaru is not a party to this suit. Secondly, as I have found EMC is a properly constituted body corporate. Thirdly, my orders do not finally determine this suit nor do they. The orders were made for the preservation of the motor vehicle the subject matter of this suit. It was and still is my view that to leave a motor vehicle in a Police Station will only lead to its deterioration. As it is much more secure and protected in the Express Kenya Ltd warehouse. I see no reason to interfere with my order and decline to do so. This application is dismissed with costs. This suit is set down already for hearing on the 19th and 20th April before Justice Kubo. As this date is imminent I decline to make any orders with regard to security of costs.

DATED and DELIVERED at NAIROBI on 15th April 2005

P.J RANSLEY

JUDGE