



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 55 of 2005

**PWETER MBUTHIA MAUNDINIA .....PLAINTIFF**  
**VERSUS**  
**NATIONAL INDUSTRIAL**  
**CREDIT BANK LTD ..... DEFENDANT**

RULING

The Applicant applies for an order as follows:-

**“THAT motor vehicle registration number KAC 050 R being held at Ongata Rongai Police Station at the instance of the Defendant be forthwith released to the Plaintiff”**

The Plaintiff alleges he bought a motor vehicle KAC 050 R from one Joseph Irungu Nduati.

Joseph Irungu Nduati had entered into a hire purchase agreement with the Defendant to purchase a vehicle **KAG 107 S**. Having defaulted the Defendant sought to recover the vehicle.

The Plaintiff claims he is an innocent purchaser. However under section 8 1(a) (e) of the Hire Purchase Act (Cap 507) ownership only devolves on the hirer when he has paid in full.

In order to succeed the Applicant must show that he has a prima facie case with a probability of success.

To say the least the evidence in this case is far from satisfactory so far as the Applicant is concerned. In his Further Affidavit he produced a report from the Director Criminal Investigations of the 23rd September 2004 in respect of KAC 050 R, which shows that the engine number appears to have been grounded. I presume this means grounded down. Also chassis numbers were not in alignment

In the Replying affidavit of Bedan Mwangi Chegeh of the 27/1/2005 at annexure **“B M C 8”** there is a report of Corporal Lumosi of the CID who recommended that Mr. Irungu be charged with various criminal offences.

It is not for this court to determine the final outcome of the case. That is a matter for the court, which deals with the matter in a full hearing of the case.

In my view the Applicant has not shown he has a prima facie case with a probability of success. There is conclusive evidence that **KAC 050 R** is a genuine vehicle. Damages in any event would be an adequate remedy.

Dated and delivered at Nairobi this 19th day of May 2005

**P.J. RANSLEY**

**JUDGE**