

REPUBLIC OF KENYA

MILIMANI COMMERCIAL COURTS

COMMERCIAL AND ADMIRALTY DIVISION

MISC APPLICATION 669 OF 2005

MUTAVI MASEKI t/a MASEKI & COMPANY ADVOCATES.....APPLICANTS

VERSUS

IMRAN NAUSHAD MAWJI.....RESPONDENT

AND

DIAMOND TRUST BANK KENYA LIMITED.....AGGRIEVED PARTY

RULING

The applicant who brought this matter under the Advocates (Remuneration) Order, is an advocate of the High Court of Kenya. There is an alleged advocate's client's relationship between the applicant and the respondent. The applicant obtained on 12th October 2005 orders in this matter restraining any third party from dispossessing him of motor vehicle registration NO. KAS 402S, which vehicle was released to him by the respondent as security for his professional fees.

An application dated 17th October 2005, was filed by an aggrieved party. When the matter first came up for hearing on a certificate of urgency, Hon Justice Waweru granted prayer NO. 2, which allowed Diamond Trust Bank Kenya Limited to be joined in these proceedings as an aggrieved party. The only prayers that seek my determination are as follows: -

(1) That an order do issue directing the Applicant to, within such a period as this Honourable court might limit, allow the aggrieved party through its appointed agent and/or officers(s) to inspect motor vehicle registration No. KAS 402S Toyota Corolla Saloon with a view to establishing its present value; (2) That this Honourable court be pleased to discharge and/or set aside the injunction orders granted to the applicant, herein on 12th October 2005;

(3) That a mandatory injunction do issue compelling Mr. Mutavi Maseki t/a Maseki & Company Advocates his authorized agents and/or servants to deliver up to the aggrieved party motor vehicle registration No. KAS 402S Toyota Corolla Saloon to Diamond Trust Bank Kenya Limited, the aggrieved party herein;

(4) That a permanent injunction do issue prohibiting Mr. Mutavi Maseki t/a Maseki & Company Advocates his authorized agents and or servants and Mr. Imran Naushad Mawji his authorized agents and/or servants and whosoever from dealing disposing off, alienating transferring, and/or in any other way negating the aggrieved party's title in motor vehicle registration No. KAS 402s.

The aggrieved party by documentary evidence has sufficiently proved to this court, the following: · That the respondent namely Mr. Imran Naushad Mawji, entered with the aggrieved party, into a hire purchase agreement whereby the respondent hired the aggrieved party's motor vehicle registration No. KAS 402s · The respondent, additionally as a further security signed a deed of guarantee and indemnity, in favour of the aggrieved party.

· The respondent failed to make payment for the hire of the said vehicle and as at 29th August 2005 was indebted to the aggrieved party kshs 468, 656. 80. · The aggrieved party notified the respondent of this

default, and by a letter dated 15th July 2005 addressed to the respondent, the aggrieved party gave notice of repossession of the vehicle. It ought to be noted that although the notices of default were given to the respondent, and he was aware that the vehicle was not free for him to dispose of it, he nevertheless, as security for professional fees, released the vehicle to Mr. Masiki Advocate.

It was then that Mr. Maseki, on a certificate of urgency dated 11th August 2005, rushed to court alleging that there were some people who were attempting to dispossess him of his right of lien over the motor vehicle registration No. KAS 402S. There now seems to be evidence that Mr. Maseki was aware that the people he said were the respondent's relatives, who wanted to dispossess him of the said vehicle were indeed agents of the aggrieved party. If not so why would he have served the order of injunction on the aggrieved party, Mombasa branch. That is tantamount to deception to the court and in indeed bordering on contempt to court. In view of the evidence of ownership presented before the court by the aggrieved party, of the aforesaid motor vehicle, what right does Mr. Maseki advocate have over the subject motor vehicle. It is clear from Halsbury's Laws of England, Vol. 44 (1) an advocate/Solicitor has a right to retain lien on property, which belongs to his client. The said advocate/solicitor cannot have a better title to retain the property than his client. Mr. Maseki advocate has no right to retain motor vehicle registration No. KAS 402S because the same does not belong to his client the respondent.

With the revelation that has been made, as stated herein above, the court takes the matter seriously. The court was deceived by the applicant Mr. Maseki advocate there is no doubt about that now and in view of that finding the court makes the following order: - (1) That the orders made by this court in this matter, on 12th October 2005 are hereby set aside and the injunction granted to the applicant, Mr. Maseki advocate, on that date, is hereby discharged.

(2) That a mandatory injunction is hereby issued compelling Mr. Mutavi Maseki t/a Maseki & Company advocates his authorized agent and/or servant to deliver up to the aggrieved party, Diamond Trust Bank Kenya Limited, motor vehicle registration No. KAS 402S Toyota corolla Saloon within 3 days from this date hereof, that is by close of business of 31st October 2005. (3) That this ruling be supplied to the Law Society of Kenya for further action that they may deem necessary against Mr. Maseki Advocate. (4) That the costs of the application dated 17th October 2005 are awarded to the aggrieved party as against Mr. Maseki Advocate.

Dated and delivered this 28th October 2005.

MARY KASANGO

JUDGE