



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 33 of 2005

FUAD MAHMOUD MOHAMEDPLAINTIFF

VERSUS

SOUTHERN CREDIT BANKING CO-OPDEFENDANTS

R U L I N G

The dispute in this suit relates to financing Agreement whereby the Defendant agreed to advance to the Principal debtor a sum of Shs.10,000,000/- upon securities agreed upon.

By this chamber Summons the Applicant /Plaintiff who guaranteed the loan states that there is no money now outstanding. Shs.12 million have been paid.

The intended repossession of the plaintiff's vehicles KAM 634Y, KAM 635Y AND KAM 636Y is unlawful and the logbooks for them should be released to applicant.

The vehicles were given by way of chattels mortgage.

However the defendant had also taken as security a charge on Kwale/Tiwi.2394. the said charge was discharged after full payment. The forwarding cheque was paid through M/s Maina Njaga advocates on 10/11/2004.

However the defendant says that the payment of 12 million was in part payment of the total indebtedness leaving a balance in the sum of Shs.4,781.95 secured by plaintiffs guarantee and the joint registration of the three motor vehicles. The Principal debtor defaulted in payments whereupon the Defendant demanded immediate payment and threatened to repossess the vehicles.

Upon perusing the supporting affidavit together with annexure and the replying affidavit together with annexure thereof, it is clear that the defendant side of story is more transparent. There is indication that there is an agreement between the parties in writing. I find the applicant has not made out a prima facie case with a chance of success.

In any case any loss he could suffer by as unlawful exposure of defendant's powers under the chattels

mortgage is monetary and can be compensated in damages.

The application is dismissed with costs. The interim injunction granted is hereby discharged.

Delivered and dated at Mombasa this 13th day of October 2005.

J. KHAMINWA

J U D G E

13/10/05

Khaminwa, J

Jason – court clerk

Mr. Sangoro h.b

Mr. Maundu

Read in their presence.

Mr. Sangoro:

I am instructed by Mr. Kiarie advocate, I apply for certified copy of proceedings and Ruling.

I apply under Order 41 rule 4 (6) for temporary stay pending formal application.

Mr. Maundu:

I do not oppose the application for proceedings for stay there is not threat.

Court:

All the same interim stay for a period of 7 days from today is granted.

Proceedings should be provided on payment of copying charges.KHAMINWA, J