

REPUBLIC OF KENYA

MILIMANI COMMERCIAL COURTS

COMMERCIAL AND ADMIRALTY DIVISION

MISC APPLICATION 669 OF 2005

MUTAVI MASEKI T/A MASEKI & CO. ADVOCATES.....APPLICANT

VERSUS

IMRAN NAUSHAD MAWI.....RESPONDENT

R U L I N G

The applicant is an advocate of the High court of Kenya. there exists a client advocate relationship between the applicant and the respondent. As a consequence of that relationship the applicant on 11th August 2005 filed an Advocate-client Bill of costs. Simultaneously with the filing that Bill of Costs the applicant filed a chamber summons dated 11th August 2005.

That chamber summons is brought under Order 39 Rule 1 and 2 A of the Civil Procedure Rules. The application seeks the following orders: - That the Respondent either by himself or through his relatives, servants, agents or persons or entities claiming or purporting to claim under him be restrained from repossessing motor vehicle registration No. KAS 402S Toyota corolla saloon from the applicant or his agent until the disposal of the matter herein or until further orders of this Honourable court. · That change of ownership of the vehicle KAS 402S Toyota corolla saloon be inhibited until further orders of this Honourable court; The respondent though served failed to attend the hearing. The application is based on the grounds that the applicant has a lien over the subject motor vehicle; that the respondent authorized the applicant in writing to keep the subject vehicle but there are other people who have threatened to repossess the same; that the respondent has no other tangible assets to cover the decree.

The applicant submitted that the subject motor vehicle was released to him as security for his professional fees and in addition the respondent gave him the right to sell the same. Counsel relied on Halsbury's Laws of England 4th Edition pages 200/2002. It is clear that a solicitor has a lien over client's property which comes to his possession as security for his fees. That lien is lost once that property is released to the client or his agent.

I find that the applicant has sufficiently proved his right to retain the subject motor vehicle but my concern was the absence of proof that the subject motor vehicle indeed belongs to the respondent. For that reason I will accede to the orders sought but only for a limited period. The orders of this court are as follows: -

(a) That the respondent either by himself, his servants, agents or otherwise is restrained from possession motor vehicle registration No. KAS 402S Toyota Corolla Saloon from the applicant or his agent until the disposal of this matter.

(b) That there shall be no change of ownership of motor vehicle registration No. KAS 402S until further orders of this court.

(c) That the applicant shall hereafter proceed to fix the bill of costs filed on 11th August 2005, herein, for taxation within 30 days from this date hereof. In default of fixing that bill of costs as aforesaid the orders herein before namely (a) and (b) above shall automatically be discharged.

(d) There shall be no orders as to costs of the chamber summons dated 11th August 2005.

Dated and delivered this 12th October 2005.

MARY KASANGO

JUDGE