

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE 232 OF 2003**

FRANCIS KAZUNGU PLAINTIFF

- VERSUS -

DANIEL KAINGU KAMBU

RACHEL DANIELDEFENDANTS

R U L I N G

The plaintiff filed a plaint against the defendants. He pleads that he is the registered owner entitled to possession of his motor vehicle No. KAB 791M valued at shs. 800,000/- Further that he handed over his said vehicle to the defendants for purposes of repairing the same and delivering to the plaintiff who would pay the repair expenses incurred. The dispute now is that the defendants have failed to carry out the repairs agreed upon and have refused to deliver the vehicle back to the plaintiff. Furthermore it is pleaded that the defendants have been using the said vehicle for commercial purposes without consent of plaintiff and the plaintiff seeks order for taking account. Plaintiff prays that pending taking of account the said motor vehicle be delivered to him.

To the plaintiffs claim defendants have filed a defence. They admit they hold the vehicle in question but state that they have spent considerable amounts of money in repair charges and although the vehicle is still not on the road they are prepared to deliver the vehicle to plaintiff upon the payment of these charges.

On the basis of these pleadings the plaintiff did on 4.2.2004 file this Notice of Motion under the provisions of Section 3A and 63 of Civil Procedure Act seeking the main order that he be at liberty to take possession of the said vehicle from the residence of the defendants pending the taking of accounts. The reasons for the applications is that he is the registered owner of the vehicle and the defendants have refused to quantify their claims. The vehicle could be vandalized while in possession of the defendants. The application is supported by affidavit of the plaintiff himself with annexures confirming his ownership and reinforcing the contents of his plaint and the application.

In reply the defendants have filed a replying affidavit and annexed some documents purporting to be accounts taken by both parties. They state the cost of repairs amount to shs. 223, 379.75. The plaintiff is said to know of these sums but he has failed to disclose in his pleadings.

After perusing the pleadings the application and affidavits in support and in reply I am satisfied that the vehicle belongs to the plaintiff. There is no serious dispute to this fact. It is clear that the plaintiff handed over the vehicle to the defendants to repair. And that repairs charges have been incurred by defendants.

The plaintiff admits that he has not paid any repair charges as he is not aware of the amount. I, therefore, find that while the plaintiff is entitled to the possession he must pay the repair charges to the defendants. Defendants can be termed bailee and have a lien on the vehicle until paid the charges. The court orders therefore that the defendants shall hand over the vehicle to the plaintiff upon mutual taking of the accounts and payment to the defendants for the repair charges of the vehicle only. The said taking of account shall be conducted by both parties personally or through appointed agents within the period of 30 days from the date hereof. The plaintiff shall pay the amounts found due as repair charges within 30 days thereafter upon payment of which the vehicle will be delivered to him by defendants. Each party shall pay their own costs for this application.

Dated this 9th day of November, 2004.

J. KHAMINWA

JUDGE

9.11.04

Ruling read in pesence of Mr. Maosa.

Mr. Gatonye in open court

J. KHAMINWA

JUDGE