



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL SUIT NO. 759 OF 2000

NATIONAL INDUSTRIAL CREDIT BANK.....PLAINTIFF

VERSUS

JOSEPH IRUNGU NDUATEDEFENDANT

And

PETER MBUTHIA MUNDINIAOBJECTOR

R U L I N G

The Plaintiff has come to court under Order 50 Rules 1 and 2 Order 21 rule 58 of the Civil Procedure Rules and Sections 3 & 3A of the Civil Procedure Act.

The Plaintiff seeks the following prayers: -

- That this Honourable court do issue and order for the release of Motor Vehicle bearing registration Number KAC 050 held at Ongata Rongai Police Station to the Plaintiff forthwith as the legal owner.
- That the logbook for motor vehicles registration numbers **KAG 107S, KAE 311D** held by the District Criminal Investigating Officer – Ongata Rongai Police Station be released to the Plaintiff.

The Plaintiff entered into a Hire Purchase agreement with the defendant for the hire of vehicle registration number **KAG 107S**. The defendant failed to pay the required instalments due to the plaintiff and also hid the vehicle the subject of the hire purchase agreement, from the plaintiff. As a consequence of that the plaintiff filed the present suit and has judgment in its favour.

The only warrants of attachment issued hereof were issued to the auctioneers Nyalgunga Traders on or about May 2002. The said auctioneers returned those warrants unexecuted on expiry of the same, on or about 25th September 2002.

The Plaintiff thereafter began to pursue warrant of arrest against the defendant/judgment debtor.

It seems that on or about 20th August 2004 and 4th October 2004 the Plaintiff in exercise of its rights under the hire purchase agreement gave repossession orders to an auctioneers to attach vehicles registration No. **KAE 311D** and **KAG 107S**. The repossessioners found that the defendant had cannibalised the two vehicles by changing their registration numbers and their engine numbers. The vehicles were also found in possession of a third party who allegedly purchased them from the defendant.

The repossession it seems, with the assistance of the police, impounded the said vehicles and the same were stored at Ongata Rongai Police Station.

It ought to be remembered that the action of repossession has nothing to do with the present suit. That as it may be the person from whom the vehicles were repossessed from filed through this suit objection to the attachment. The plaintiff acknowledges that there was no place for that objection in this suit for the deponent of the affidavit in support of the present application stated in paragraph 15 of that affidavit;

“That the objection was improper in the first place as this matter is not an attachment but a repossession.”

Since that is the correct position of this matter I am of the view that the present applicant is misconceived because the vehicles were not attached due to an order of this court. The circumstances under which the vehicles are in the custody of Ongata Rongai Police Station is not clear to me under which circumstances the logbooks are with CID, how then can I order them to be released. They could, for all I know, be the subject of a criminal proceedings.

For the aforesaid reasons the application dated 5th November 2004 is dismissed for being misconceived. There shall be no order as to costs.

Dated and delivered this 15th day of December 2004.

MARY KASANGO

JUDGE