



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.383 OF 2002

FARIDA AHMED HASSAN PLAINTIFF

VERSUS

IMPERIAL BANK LTD. DEFENDANT

RULING

FARIDA AHMED HASSAN (the plaintiff) instituted this suit against the IMPERIAL BANK LIMITED (the defendant) through a plaint dated the 9th October 2002 seeking an order to issue against the defendant and/or its agents or servants, compelling them to release to the plaintiff motor vehicle Reg. No. KAG 427 IVECO PRIME MOVER and Trailer Reg. No. ZB 4327 (to be referred to as “the suit vehicle”) and further seeking judgment for general damages for unlawful detention of the suit vehicle.

The cause of action pleaded by the plaintiff is that, at all time material to this suit, he was the registered owner of the suit vehicle used in transportation business between Mombasa and Dar-es- Salaam. In the month of September 2002 the suit vehicle left Mombasa for Dar-es-Salaam where it developed mechanical problem and was left at a garage from where the Plaintiff would collect it from. The defendant, while pursuing motor vehicle Reg. No. KAG 806Y Iveco Track and Doll Semi Trailer 4 Excel Reg. No.ZB 5832 also towed away the suit vehicle to unknown place in Tanzania. The Plaintiff’s claim therefore against the defendant is for an order directing the defendant to unconditionally release the suit vehicle to him.

In its statement of Defence filed on 1st November 2002 the defendant has denied towing away the suit vehicle but admits to have towed away only motor vehicle Reg. No. KAG 806Y/Trailer ZB 5832 from Dar-es-Salaam.

In a Replying Affidavit MR. Sujam Khataw, the Defendant’s Manager, has deponed as follows:-

“4. That the correct position is that, sometimes in 1996 the Defendant financed one Mr. SAID FARAJ (borrower) to purchase motor Vehicle Registration Number KAG 806Y VECO TRUCK and DOLL/SEMI TRAILER 4 EXCELL Reg. No. ZB 5832 under a Hire Purchase Agreement pursuant to which the borrower provided additional collateral security by way of Nissan Diesel Truck Reg. No. KAC 593 L. Hereto annexed as exhibit “A” is a copy of the said agreement.

5. That subsequently the borrower defaulted and went underground whilst hiding the said motor vehicle from being repossessed by the defendant.

6. That on 4th September 2000 the Defendant was informed by M/S Marchet Auctioneers (K) Ltd. That the said vehicles were reasonably believed to be in the Republic of Tanzania. Hereto annexed as exhibit “B” is a copy of a letter from the said auctioneers.

7. *That subsequently the defendant sought the help and intervention of the Provincial Criminal Investigation Officer in Mombasa pursuant to which the defendant gave to the defendant a letter addressed to an address in Dar -es-Salaam. Hereto annexed as exhibits "C -1 and "C-2" are the said letters.*

8. *That the Defendant also caused to be filed before this court Civil Suit No.454 of 2001 pursuant to which the relevant orders were obtained. Hereto annexed as exhibit "D: is a copy of the said order.*

9. *That subsequently there to the Defendant sought and obtained in the High Court of Tanzania, order enforcing the earlier orders issued by this Honourable Court. Hereto annexed as Exhibit "E" are the relevant orders issued by the Honourable High Court of Tanzania.*

10. *That it was in the execution of the said Court orders that the defendant dispatched its agents to Dar-es-Salaam to liase with the Tanzanian Police and repossess Motor Vehicles Reg. No. KAG 806Y, Doll S/Trailer 4 Excel ZB 5832 and Nissan Diesel Truck KAC 593L which were found parked in the Yard of Messrs. Ramzan D. Walji Co. Ltd. of P.O. Box 4061 Dar-es-Salaam.*

11. *That the defendant's agents did not and have never repossessed Motor Vehicle Reg. No. KAG 427L and Trailer Reg. No. ZB 4327 as the defendant has no claim to the same."*

I have read and perused all the above annexed documentary exhibits referred to by Mr. Khataw in his replying affidavit. I am satisfied that the defendant had authority from the court to repossess motor vehicles KAG 806Y, Doll S/Trailer 4 Excel ZB 5832 and Nissan Diesel Truck KAC 593L.

I am also satisfied that the defendant found the said vehicles parked in the yard of Messrs. Ramzan D. Walji Co. Ltd. At Dar-es- Salaam and repossessed them.

The issue in this suit, and indeed in this application, is whether, while in pursuit of the above vehicles, the defendant also repossessed the suit vehicle. From the affidavit evidence put on record, the alleged repossession and detention of the suit vehicle by the defendant has not been established by the plaintiff at all. The plaintiff has thus failed to prove that it has a prima facie case with a probability of success.

The application for injunction is for rejection and the same is hereby dismissed, with costs to the defendant.

It is so ordered.

Dated, signed and delivered this 21st August 2003.

A.G.A. ETYANG

JUDGE