



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL 187 OF 1997**

**STANDARD CHARTERED ESTATE MANAGEMENT LTD ..... APPELLANT**

**VERSUS**

**DAVID MARIRU MWANGI ..... RESPONDENT**

**J U G D E M E N T**

This is an appeal filed herein on 19th July, 1997 against the Judgement of the Senior Resident Magistrate in Kiambu Senior Principal Magistrate's court Civil Case No.2692 of 1995 delivered on 12th June, 1997.

The respondent herein was an employee of the appellant and during the course of employment, he bought a motor vehicle, Registration Number KYX 518 with a loan from the appellant. The loan was Kshs.260,000/= with interest chargeable thereon at 6% per annum.

On 11th June, 1995 the appellant terminated the services of the respondent and by then there was some balance of unpaid loan which the appellant demanded to be paid in full but because the respondent could not meet this condition the motor vehicle was repossessed.

The respondent then filed a suit in the lower court and prayed for an order to compel the appellant to release the motor vehicle to him and also for proper up to date accounts regarding the loan to be furnished to the respondent. There was a prayer for the costs of the suit.

In an amended defence filed in court on 22nd October, 1996 the appellant stated that the respondent was indeed indebted to the appellant in the sum of Kshs.307,743/95 and denied paragraphs 7, 8(a) and 9A of the plaint.

And in the counter claim the defendant stated that the loan granted to the respondent with interest at 6% was a staff benefit which ceased when his services were terminated and that after the termination of employment on 1st June, 1995 the loan started attracting interest at commercial rate.

The same counter claim stated that the respondent was required to pay to the appellant the sum of Kshs.307,743/95 with interest at 30% per annum.

The case was heard by the learned Senior Principal Magistrate on 14th January, 1997, 25th February, 1997 and 8th April 1997 when both the plaintiff and the defendant gave evidence. Judgement was delivered on 7th May, 1997 wherein the Magistrate found the appellant liable and awarded the respondent the prayers sought in the plaint; hence this appeal.

The respondents' evidence in the lower court was that he got a loan from the appellant in 1991 on terms that the same would be repaid in 72 months with interest at 6% per annum.

The mode of payment was that the respondent had to deliver milk from Nanga Kihota Limited to Naivasha Milk factory using motor vehicle registration number KYX 518 and that on delivery of the milk money would be deducted from the farm and credited to the loan account.

That the parties entered into an agreement in this regard in exhibit 1. According to the respondent this was the only agreement entered into and there was no chattels mortgage entered into and/or registered.

According to the respondent, the motor vehicle was insured by the appellant and the insurance amount included in the loan amount.

The respondent stated that when his services were terminated he asked for payment of his savings and provident fund and also asked about the state of the loan account.

That when accounts were given to him he found that deductions for milk deliveries for 1991 had not been credited to the loan account, so were deductions for milk deliveries for November 1993, and July 1992 (for maize planter transport from Nanga Kihota Ltd to Ngiwa Estate Rongai). That the appellant took no action about these questions but only asked for payment of the loan.

That the motor vehicle was repossessed on 8.11.95 without any court order when some 8 men, including an armed police officer, showed him a letter from an advocate authorizing repossession and took him to Naivasha Police Station where he left the motor vehicle.

The respondent's contention was that the motor vehicle was not lawfully repossessed and this is why he filed the suit subject to this appeal in the lower court.

The respondent also claimed damages for loss of use of the motor vehicle at Kshs.2,000/= per day since the repossession.

On the defence side, three witnesses were called. One of them, Reuben Kiritu, the personnel manager of the defendant explained the process regarding the termination of the respondents' services with the management; the loan arrangement, demand for its repayment and the repossession of the motor vehicle.

He agreed, however, that there was no provision in the agreement giving the appellant power to charge interest in excess of 6% per annum and also agreed that the motor vehicle was attached without chattels mortgage as advised by their lawyers.

DW2 testified that it was him who refused to approve the payments or credits the respondent complained of not having been paid by the appellant and DW3 explained why he could not pay some money to the respondent because of lack of approval from the group manager.

The learned Magistrate wrote her judgement in which she ordered the release of the motor vehicle to the respondent and also ordered the appellant to pay him Kshs.345,600/= for loss of user thereof and this is why this appeal was filed.

The appeal was heard in this court on 8th July, 2002 wherein counsel for both parties submitted on it. Counsel for the appellant stated that the repossession was not unlawful because it was pursuant to a court order in Kiambu Miscellaneous application number 175 of 1995 filed by the court broker Clement Kamau.

That since the appellant was a co-owner of the motor vehicle by virtue of joint registration thereof with the appellant, it had a right to repossess it as the appellant owed it money. That the benefits the respondent enjoyed when he was an employee of the appellant ceased when his services were terminated and that the appellant was thereafter entitled to charge interest on the balance of the loan at the commercial rate.

That the appellant was entitled to repossess the motor vehicle and that the agreement was not invalid as

between the parties due to non-registration. Counsel prayed that the appeal be allowed and judgement entered in favour of the appellant.

Counsel for the respondent opposed the appeal. She said there was no provision for repossession of the motor vehicle in the agreement.

That the fact of joint ownership did not constitute the right of repossession. That if an agreement is not registered under chattel's mortgage then there is no right of repossession.

That the application made by the auctioneer in Kiambu court was not in respect to repossession because the applicant was not a party to such application. That once it was found the repossession was unlawful, a finding of loss of user was correct. Counsel stated that there was no basis for varying the rate of interest and that the time passed as respondent was not given any audience and prayed that this appeal be dismissed with costs.

These are the submissions the court has heard and recorded for determination and decision.

It is true to say the repossession of the motor vehicle by the auctioneers was not as a result of a court order.

I think what the respondent did was to go and keep the motor vehicle at Naivasha police station for safe keeping for it only to be released to the said auctioneer when he went to court for an order for police to release the vehicle to him. I do not even understand what kind of application this was but as the appellant was not a party to such an application it is incorrect to say the order was for the repossession of the motor vehicle.

The agreement of the loan did not include repossession of the motor vehicle nor did it include any provision for the variation of the rate of interest from 6% per annum upwards.

Worse still, no chattels mortgage was created over this loan thus further depriving the appellant of the right to repossess the motor vehicle.

That the appellant had been registered as co-owner of the motor vehicle was not sufficient to enable it resort to repossession of the motor vehicle because the respondents' services had been terminated.

The respondent sufficiently established by evidence the loss he suffered as a result of use of loss of the motor vehicle due to the unlawful repossession and the learned Senior Principal Magistrate correctly awarded him the damages in her judgement.

The learned Magistrate saw and heard the witnesses testify in the case and she was in a better position to assess their credibility. She accepted the evidence of the respondent's evidence as true and rejected that of the appellant which she was entitled to do.

I do not find any basis of reversing the decision of the learned Magistrate which I find reasonable in the circumstances.

I dismiss this appeal with costs.

Delivered this 30th day of July, 2002.

**D.K.S AGANYANYA**

**JUDGE**