

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 319 OF 2002

K. K. GUARDS RADIO SECURITY

**SYSTEM LTD.....
PLAINTIFF**

VERSUS

**CARTRACK SERVICES LTD
DEFENDANT**

R U L I N G

The plaintiff filed a suit claiming an injunction to restrain the defendant from handling, dealing, selling retaining or removing some equipment installed in the plaintiff's premises pending payment of all sums due to the plaintiff.

It is also sought on declaration that the plaintiff is entitled to lien on the machinery pending payment of all dues payable to the plaintiff. By chamber summons dated as amended on 31-7-2002 the plaintiff now seeks interim injunction pending hearing of this suit. The application is supported by affidavit of J. Mupe credit controller of the plaintiff which shows that there is due and owing to them from defendant a sum of Shs. 2,309,196/-. This amount is not claimed in this suit. The affidavit shows also that the plaintiff seeks court protection because of defendants threats to re-posses the machinery by force.

For the defendant a Replying Affidavit by Paul Maloli states that there was no oral agreement entered into between the parties and further that a company cannot be committed by mere words. Also that if any damages is suffered by plaintiff can be quantified and compensated in damages and that the greatest loss would be suffered by defendant and that by illegally seizing the machinery and equipment the plaintiff is not entitled to equitable remedy having come to court with unclean hands. The defendant has not yet filed a statement of defence.

Having perused the pleadings and the applications with affidavits filed by both parties, it is clear that there is a relationship between the parties. Otherwise how would the defendant's machinery have come to the possession of the plaintiff. The plaintiff claims payments of money from the defendant and states that he is entitled to keep the possession of the machinery until paid the claims. He therefore claims possessory lien on the machinery.

It is trite law that a lien creates no cause of action but provides a defence to the true owner of the goods in a claim of detinue and conversion. In the case of true lien the plaintiff is therefore entitled to keep the goods until paid his claims. In the present case it appears that the parties had an agreement whereby the defendant agreed to part with the possession of the machinery for certain purpose. The plaintiff states that it was terminated by notice this agreement and it only remains for settlement of payment demanded. The termination is admitted by the defendant.

I find that the plaintiff is not in possession of the goods illegally or unlawfully and it is entitled to keep the machinery until paid. I am of the view that the plaintiff has shown a prima facie case and at this stage I find the application has merit. In the circumstances the same is allowed and orders are granted as prayed under prayer (1)C. Costs shall be in the case.

Dated this 20th September, 2002.

HON. J. KHAMINWA

LADY COMMISSIONER

Read in the presence of Mr. Weloba for Applicant and Mr. Kithi holding brief for respondent.

HON. J. KHAMINWA

LADY COMMISSIONER