

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 370 OF 1999

LOISE WANJIRU NGIGI PLAINTIFF
VERSUS
JAMES KANGOGO DEFENDANT

RULING

This application has been made under Section 3A of the Civil Procedure Act to discharge, vary or set aside an order made by this court on 11.5.1999. The application is supported by an affidavit sworn on 9.10.2000 by the applicant and is based on the following grounds:-

- (1) That the defendant does not have in his possession the logbook for motor vehicle registration No. KWT 240 as the same is held by Diamond Trust Bank Kenya Ltd. as security for a loan granted to the defendant in respect of which there is an outstanding debt of Shs.3,491,981/99 as at 30.9.2000; and
- (2) The defendant is therefore unable to comply with the order given as aforesaid.

I must confess that I am most unimpressed by the grounds which the applicant has put forward in support of this application and my view of the matter is that he is trying to avoid the obligations imposed upon him by the order sought to be set aside. It is clear that when the applicant entered into the sale agreement with the respondent, he did not at that time disclose to the respondent that he would in any way be unable to deliver the motor vehicle. On the contrary, he undertook to release the relevant logbook forthwith. He is therefore as an afterthought attempting to avoid liability by claiming that he is now unable to deliver the logbook as agreed.

The indebtedness to Diamond Trust Bank Ltd. allegedly giving rise to that inability did not arise after the sale agreement. The applicant knew about it even before he contracted to sell the motor vehicle to the respondent. For all those reasons, I am of the opinion that this application is not only misconceived but also an abuse of the process of this court. The application is dismissed with costs.

Dated at Nairobi this 12th day of June, 2001.

T. MBALUTO
JUDGE