

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

civ case 1861 of 00

David Sifuma APPELLANTS

VERSUS

Sally Karago & Another..... RESPONDENT

JUDGMENT

Through this application the plaintiff/applicant seeks a mandatory injunction to compel the defendants to put him in possession of a motor vehicle registration number KAE 940 C which he says was taken away from him, allegedly illegally on October 13, 2000 on the instructions of the 2nd defendant Mercy Wambui Kamau, an advocate of this court apparently acting on her own behalf and on behalf of the 1st defendant . The application is supported by an affidavit sworn by the applicant in which he sets out the facts of the matter, as he sees them.

Both the defendants have challenged on various grounds the applicant's right to seek and obtain the remedy of a mandatory injunction. Amongst those grounds is the claim that, apart from failing to honour his part of the agreement pursuant to which the motor vehicle had been released to him by failing to pay for the motor vehicle as agreed, the applicant was aware of certain facts relating to the ownership of the motor vehicle which restricted the 1st defendant's title thereto and which meant that she could not pass any title to the applicant without the involvement of a third party, namely, the Euro Bank Limited. The defendants also argue that the applicant has not shown that an award of damages cannot fully compensate him.

The facts disclosed by the various affidavits filed by the parties hereto reveal that at the time of signing the agreement pursuant to which the motor vehicle the subject matter of this suit was purportedly sold to the applicant, the motor was registered in the joint names of the 1st defendant and Euro Bank Limited. That joint registration came about because the 1st defendant had offered the same motor vehicle to Euro Bank Limited as security for a loan advanced by the bank to the 1st defendant's husband. At the material time the applicant was an employee of the 1st defendant's husband and was aware of the joint ownership of the motor vehicle because in his undated letter to the 1st defendant he talks of obtaining a transfer signed by the Euro Bank.

That being the case one of the questions that will have to be determined in this matter is whether the sale between the applicant and the 1st defendant was valid and, flowing from that, whether the applicant can claim possession as a remedy. That is of course an issue which can only be resolved after hearing oral evidence from both parties. Pending that however it does seem clear to me that no order of possession can be granted at this stage because the title of the 1st defendant to the motor vehicle is not all that clear. The other reason which suggests that the application should not succeed is that the subject matter of the suit being a motor vehicle, the value of which can easily be determined, it is my view that the applicant can be fully compensated by an award of damages. Moreover, the evidence available indicates that the motor vehicle concerned has already been sold by the Bank to a third party, and it may therefore be an exercise in futility for this court to make orders affecting persons who are not parties to this suit.

For all these reasons I do not think that the applicant is entitled to orders he seeks and I dismiss the

application with costs.