



**Karsan Ramji & Sons Limited v Officer Commanding Station Kanyonyoo Police Station & 4 others (Constitutional Petition E001 of 2023) [2023] KEELC 17928 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17928 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
CONSTITUTIONAL PETITION E001 OF 2023**

**LG KIMANI, J  
MAY 2, 2023**

**BETWEEN**

**KARSAN RAMJI & SONS LIMITED ..... PETITIONER**

**AND**

**OFFICER COMMANDING STATION KANYONYOO POLICE  
STATION ..... 1<sup>ST</sup> RESPONDENT**

**OFFICER COMMANDING STATION NGUUTANI POLICE  
STATION ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL NATIONAL POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KITUI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the application dated April 6, 2023. The Petitioner/Applicant seeks order 2 and 4 of the said application. The said prayers seek the following orders;
2. That pending hearing and determination of this application inter partes, a mandatory injunction be issued directing the Respondents whether acting jointly or severally by themselves, their servants, agents, representatives or howsoever otherwise to release the two impounded motor vehicles and hand over possession to the Petitioner.
4. That pending hearing and determination of this application inter partes, a prohibitive injunction be issued restraining the Respondents whether acting jointly or severally by themselves, their servants, agents, representatives or howsoever otherwise from arresting, detaining, extorting and or in any other manner interfering with the Petitioner, their employees, agents and business without justifiable cause/grounds.



2. The application was filed under certificate of urgency before the High Court on April 11, 2023. The Judge of the High Court noted that this matter was related to another matter before the ELC and directed that in order to avoid conflicting orders and/or parallel orders, the file be transferred to this court for further orders. The Applicant was directed to serve the application on the Respondents for hearing on April 17, 2023.
3. When the application came up for hearing on April 17, 2023 the Applicant was directed to serve the application afresh and the same was set for hearing on April 26, 2023. It was also noted that the Petition herein was related to a pending Petition being Petition number E005 of 2022 between the Petitioner herein and the 5<sup>th</sup> Respondent and the court directed that the two be mentioned on the same date for the reason that there is an application pending inter partes hearing that relates to the motor vehicles subject matter of the Petition herein.
4. The Motor vehicles subject matter of the application herein are KDC 403L and KDE 039 Q. The said vehicles are said to have been intercepted and detained at the cess toll roadblock at the main junction of Mwingi-Kitui road and are currently held at Kanyoonyo police Station and Nguutani Police Stations respectively.
5. When the application came up for hearing on April 17, 2023 the 2<sup>nd</sup> Respondent appeared in Court but he did not attend court on April 26, 2023. On the said date the other Respondents save for the 5<sup>th</sup> Respondent did not attend court though served.
6. The Court has considered submissions by Counsel for the Petitioner/Applicant and Counsel for the 5<sup>th</sup> Respondent and the fact that this is an application for interim relief pending hearing and determination of the application inter partes. Counsel for the 5<sup>th</sup> Respondent was given directions to file its reply to the application by May 2, 2023, the date of this ruling while the Applicant was directed to file a supplementary affidavit and submissions. The Court takes into consideration the following facts and issues in arriving at its decision;
  - i. The prayers sought are for interim relief pending hearing and determination inter partes the court will thus say as little as possible concerning the application in order to avoid pre-judging the main application. At this point the Respondent has not filed its replying affidavit and the submissions considered are those that pointed to the weaknesses in the evidence presented in support of the application.
  - ii. The motor vehicles subject matter of the application herein are said to have been detained from March 17, 2023 and to date no person has been charged with any criminal or traffic offence and the Petitioners concern on violation of constitutional rights and the financial losses incurred as a result of the impounding of the motor vehicles have been noted by the Court and taken into account.
  - iii. The Respondent challenges the Applicants claim on the ground that it is not the owner of the motor vehicles impounded. The Applicant stated that the motor vehicles were hired from Matunda Transporters and Suppliers Ltd. No documents have been exhibited to show that the said company is the owner of the motor vehicles and/or how they are associated with the vehicles. No document to confirm the hiring of the vehicles has been exhibited. The letter stated to be proof of hiring of the vehicles is not signed and indeed the contents thereof do not show that the vehicles were hired by the Petitioner. In the courts view the Applicant has not shown any connection to the impounded motor vehicles save for the statements made in the application and it would be unsafe to release the vehicles to them at this stage.



- iv. The court has also considered that the Applicant stated at paragraph 6 of the supporting affidavit that the vehicles were transporting quarry product from its quarry in Kyuso in Kitui County. That upon inquiry at the Kanyonyo police Station they were informed that the vehicle KDC 403L was booked for the offences of being in possession and transporting of limestone without a license or permit contrary to Section 203 of the *Mining Act*, 2016, Mining without a valid Kitui County government issued business permit and evading to pay cess fees as per the Kitui County Finance Bill. In the circumstances it would have been prudent for the Petitioner to show that the accusations against it were untrue by attaching the licenses and/or permits they are accused of not possessing. The Court made inquiries from Counsel for the Applicant as to whether his client holds licenses and permits for mining limestone and he stated that his client indeed has the said licenses. However, it is noted that the same are not part of the proceedings herein.
7. The Applicant seeks prayers that are mandatory in nature. If prayer 2 of the application herein is granted at this stage there will be nothing left to litigate since the application will be spent. In the case of *Kenya Breweries Ltd & Another v Washington O. Okeya* [2002] eKLR, the Court of Appeal stated as follows on mandatory injunctions.
- “A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
8. Further, in the case of *Nation Media Group & 2 Others v John Harun Mwau* [2014] eKLR, the court of appeal said:
- “It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.”
9. With regard to prayer 4 it is the Courts view that as stated above the applicant has not shown that it holds licenses and permits to carry out the quarrying activities and the business it is engaged in as claimed. It cannot be stated with certainty at this point that the acts of the Respondents are acts of harassment of the Applicant.
10. It is thus the courts view that the orders sought are not merited at this point and the application ought to be heard inter partes in order that all issue pertinent to the application can be fully heard and determined.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 2ND DAY OF MAY, 2023.**

**HON. L. G. KIMANI**

**ENVIRONMENT AND LAND COURT, JUDGE KITUI**

**Ruling read virtually and in open court in the presence of-**



**C/A Musyoki**

**Shikanda appearing with Ngoloma for petitioner**

**Katunga Mbuvi for the 5<sup>th</sup> Respondent**

