



REPUBLIC OF KENYA



KENYA LAW
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**Libera Impex Limited v Libera Executive Limited (Commercial Case E445 of 2023)
[2025] KEHC 367 (KLR) (Commercial and Tax) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E445 OF 2023**

PM MULWA, J

JANUARY 23, 2025

BETWEEN

LIBERA IMPEX LIMITED PLAINTIFF

AND

LIBERA EXECUTIVE LIMITED DEFENDANT

RULING

1. For determination is the defendant's Notice of Motion application dated 26th April 2024 filed pursuant to Order 40 rules 1 & 2 of the Civil Procedure Rules and Article 40 of *the Constitution*.
2. The defendant prayed for an order to compel the plaintiff to release certain vehicles from its E-Citizen system in order to enable them to continue operating and minimize the risk of the same being impounded by the police and the auctioneers for failure to pay loans. The said vehicles are: KDE 048B, KDJ 952U, KSC 425E, KDD 280H, KBH 231R, KCX 389D, KCX 534D, KDD 326D, KCX 058Y, KDD 348D, KCP 490Q, KCJ 891E, KCW 796G, KDD 346D, KDH 849T, KDD 347D, KCV 107T, KDB 034Q, KCY 902H, KDK118U, KBX 295M and KDE 094L.
3. The grounds of the application were that the aforementioned vehicles were branded and operated under the defendant's logo and colours; that prior to the disagreement between the plaintiff and defendant, the vehicles were licensed through the E-Citizen account owned by the plaintiff and that after the expiry of the vehicles' licenses the plaintiff refused to release the vehicles to be registered under the defendant's E-Citizen.
4. The defendant contended that as a result of the plaintiff refusing to release the vehicles to it, the vehicles do not have an operating license which has resulted in some of them being grounded and some have been impounded by the police.



5. The defendant stated that most of the vehicles were bought through bank financing and their being grounded highly prejudices the owners' constitutional right to property and unless the orders herein are granted, the owners will continue to suffer.
6. In opposition to the application, the plaintiff filed grounds of opposition dated 13th May 2024.
7. The plaintiff argued that the defendant is seeking orders that are final in nature and which violate provisions of Order 40 Rules 1 and 2 of the Civil Procedure Rules, that the vehicles do not belong to the defendant and as such it does not have authority to seek orders in court on behalf of the individual owners.
8. Further that the procedure of listing and delisting of motor vehicles on the National Transport and Safety Authority (NTSA) platform is well set out and the defendant has not met the said requirements and that the application is hinged on gross misrepresentation of the law and facts touching on the subject matter.

Analysis and determination

9. The plaintiff and defendant filed written submissions dated 11th July 2024 and 1st July 2024 respectively. The same together with the pleadings in this matter have been considered by the court.
10. The question that arises for determination is whether the defendant is deserving of the orders sought, that is, a court order directing the plaintiff to release the vehicles from its E-Citizen platform to it.
11. The plaintiff submitted that the prayer sought in the instant application is a substantive prayer in the main suit and cannot be granted at an interlocutory stage.
12. I have perused the contents of the defendant's statement of defence and counterclaim dated 7th November 2023 filed in this suit. In its counterclaim, the defendant prayed, inter alia, for the following order against the plaintiff;

“Release of member vehicles from the Libera-NTSA system who are currently operating under Libera Executive to enable them to continue with business.”
13. It is clear that the defendant is seeking in the instant application, the same prayer it seeks in its counterclaim in the main suit. If the prayer were to be granted at the interlocutory level it would certainly compromise the substratum of the main suit.
14. The court has not had the opportunity to consider the issues raised in the main suit and it would be a miscarriage of justice for final orders to be granted at this stage. Although the application was filed pursuant to Order 40 rule 1 and 2 of the Civil Procedure Rules, which provides on the issuance of interlocutory injunctions pending determination of suits, the orders sought thereto are final in nature and ought to be determined in the main suit.
15. For this reason, I dismiss the instant application with costs awarded to the plaintiff.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

P.M. MULWA

JUDGE

In the presence of:



Ms. Njuguna h/b for Mr. Githinji for Plaintiff/respondent

Mr. Kimori h/b for Mr. Mwangi for Defendant/applicant

Court Assistant: Carlos

