



REPUBLIC OF KENYA



KENYA LAW
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**Sumac Microfinance Bank Limited v Gitau & 3 others (Civil Appeal E126 of 2023)
[2025] KEHC 3387 (KLR) (Commercial and Tax) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E126 OF 2023
BK NJOROGE, J
MARCH 13, 2025**

BETWEEN

SUMAC MICROFINANCE BANK LIMITED APPELLANT

AND

PAUL MUCAI GITAU 1ST RESPONDENT

FRESHPRO DAIRY LIMITED 2ND RESPONDENT

AHMED EDDLE IBRAHIM 3RD RESPONDENT

**NATIONAL TRANSPORT & SAFETY AUTHORITY (NTSA) 4TH
RESPONDENT**

JUDGMENT

1. This is a judgement arising out of an appeal preferred against the ruling delivered by Honourable P.K. Rotich (Mr.). The ruling was delivered on 9th June, 2023. It arises out of Milimani Chief Magistrate's Court Commercial Suit No. E075 of 2023.
2. The Trial Court issued the following orders on 9th June, 2023;
 - a. That an order of interlocutory injunction/inhibition be and is hereby issued against the respondents, their servants, agents and or anybody acting on their behalf from taking possession of the applicant, transferring, attaching, selling or disposing motor vehicle registration number KCY 541S pending the hearing and determination of the main suit.
 - b. That the costs be in the cause.



3. The Appellant is the original 1st Respondent/Defendant in the suit before the Trial Court. The 1st Respondent is the original Applicant/Plaintiff. The 2nd to 4th Respondents do not appear to have any interest in this appeal. They did not participate during the highlighting of submissions.
4. This is an interlocutory appeal arising out of orders issued pursuant to an application under a Certificate of Urgency by way of a Notice of Motion dated 31st January, 2023. It was filed by the 1st Respondent.

Background Facts

5. The Appellant is aggrieved by orders issued by the Trial Court restraining it from attaching a motor vehicle KCY 541W. The motor vehicle is registered in the name of the Appellant and the 2nd Respondent. It was used to secure an overdraft facility of Ksh.15,000,000 and a further loan of Ksh.15,000,000.
6. As the loan was in default, the Appellant moved to realize the securities pledged by the 2nd Respondent. Part of the securities was the motor vehicle KCY 541W, the subject matter of this appeal.
7. The 1st respondent maintains that at all material times, the subject motor vehicle was lawfully his and he has never transferred it to any other party. That it was being used on a car hire basis by the 3rd respondent.
8. He alleges that the motor vehicle was fraudulently and unlawfully transferred from his name to the joint names of the Appellant and the 2nd Respondent. That he did not pledge or allow the motor vehicle to be pledged as security for any loans.
9. It is the granting of the injunction that restrained the Appellant from attaching the motor vehicle, that has triggered this appeal.
10. The Appeal has been admitted. Directions were also given that parties do file written submissions.
11. The Court has seen the Appellant's written submissions dated 7th September, 2024 and the authorities cited. The Court has equally seen the 1st Respondent's written submissions dated 12th October, 2024 and the authorities cited.
12. The Memorandum of Appeal filed raises nine (9) grounds. In the main, the entire appeal challenges the Trial Court's exercise of discretion in granting the injunction to the 1st Respondent.

Issues for Determination

13. The Court frames two (2) issues for determination in this appeal'
 - a. Whether the appeal is meritorious.
 - b. What reliefs lie from this appeal?

Analysis

14. This is a first appeal. Court is therefore duly bound to re-look, re-consider and re-evaluate the evidence presented before the trial court afresh. Then this Court has to reach its own conclusions. See *Selle & Another -vs- Associated Motor Boat Co. Ltd & others* [1968] E.A 123.



15. The Court is being asked to interfere with the Trial Court’s discretion in awarding an injunction. An injunction is a discretionary remedy. The Court refers to *Mbogo & another -vs- Shab* [1960] E.A. 93, on when it can interfere with the Trial Court’s exercise of discretion.
16. The Court is also guided by the decision of the Court of Appeal in *Nguruman Limited -vs- Jan Bonde Nielsen & 2 others* [2014] eKLR.

“Ordinarily, this Court would not express any concluded view on the dispute between the parties and must not also form a distinct impression as to the merits of the suit at this stage since such determination is reserved for the trial court after the interlocutory appeal has been disposed of.”
17. This Court is therefore called upon to exercise caution, so that its pronouncements do not affect or predetermine the outcome of the hearing in the Trial Court below.
18. As earlier stated, the appeal challenges the exercise of the discretion of the Trial Court. What the Court hears the Appellant to submit is that from the facts presented by way of an affidavit, an injunction ought not to have issued.
19. The 1st Respondent on the other hand submits that the Trial Court exercised its discretion properly. That this Court should not be seen to interfere with the exercise of such discretion.

a. Whether the Appeal is Meritorious.

20. The Appellant submits that it is fully registered as an owner of the subject motor vehicle, with the 2nd Respondent. It is owed a huge debt by the 2nd Respondent. It seeks to repossess the motor vehicle for purposes of realizing the security. It relies on the loan agreements that it signed with the 2nd Respondent. It also relies on the copies of the logbooks dated 23rd September, 2020. It shows that the Appellant and the 2nd Respondent as the registered owners. The motor vehicle is said to have been pledged as security for the loans advanced to the 2nd Respondent by the Appellant.
21. On the other hand, the 1st Respondent maintains that he never transferred this motor vehicle to anyone. Not to the 3rd Respondent or the 2nd Respondent. He attached a copy of motor vehicle copy of records. It showed him as the previous owner of the motor vehicle. He challenges any transfer processes from himself to any other party.
22. This is the situation that confronted the Trial Court. There were allegations of fraud and illegality. The National Transport & Safety Authority (NTSA) has been dragged into the suit.
23. To this Court, a prima facie case has been established. There is a dispute crying out to be heard and resolved. If the motor vehicle is sold, the 1st Respondent stands to suffer losses. As to the balance of convenience, it favours maintaining the status quo.
24. The Court has said enough noting that it is restraining itself from making pronouncements that may influence the Trial Court.

b. What Reliefs Lie from this Appeal

25. The Court notes with concern that whereas the Appellant has been restrained, nothing stops the 1st Respondent from dealing with the vehicle. He can as well sell it to an unsuspecting 3rd party. He may as well say that since he has an injunction in his favour, his claim to ownership has been sanctified by the injunction.



26. However, this is not so. The purpose of an injunction is to preserve the property, pending the hearing and determination of a suit. The injunction in this case appears lopsided. The Appellant's rights are not protected by the injunction.
27. The Court is minded to order that a caveat be registered by the 4th Respondent, restraining any sale, transfer, pledging or parting with the ownership of the subject motor vehicle until the case before the Trial Court is heard and determined.
28. The parties would best benefit from the services of the Court through a quick adjudication of this dispute. This is through a full trial. Interlocutory applications will not unravel the mysteries of the impugned transfers and solve the allegations of the fraud. This can only be done through a full trial.
29. The appeal fails, save that the Court issues the order for registration of a caveat to aid in furtherance of the justice of this case. This will also aid in preserving the status quo of the subject matter of the suit, which is the essence of an injunction order.
30. To keep the parties focused and their eyes on the ball, the Court is of the view that each party should bear their own costs of this appeal.

Determination

31. The Appeal is dismissed in its entirety with no orders as to costs.
32. The 4th Respondent do register a caveat against the subject Motor Vehicle registration number KCY 541Srestraining any sale, transfer, pledging or parting with the ownership of the subject motor vehicle until the case before the Trial Court in (Milimani) CMCC E075 of 2023 Paul Mucai Gitau Vs Sumac Micro Finance Bank Limited & 3 Others is heard and determined and or further orders.
33. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS 13TH DAY OF MARCH 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Munene for Appellant

Miss Karongo for Respondent

Mr. Luyai- Court Assistant

