



REPUBLIC OF KENYA



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Mogeni t/a Mogs Auto Services v County Government of Kisumu (Civil Case E003 of 2025) [2025] KEHC 6375 (KLR) (16 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E003 OF 2025**

A MABEYA, J

MAY 16, 2025

BETWEEN

EVANS MOGENI T/A MOGS AUTO SERVICES PLAINTIFF

AND

THE COUNTY GOVERNMENT OF KISUMU RESPONDENT

RULING

1. The plaintiff sued the defendant by a Plaint dated 6/1/2025 and sought judgment for Kshs 76,345,525/= together with interest and costs.
2. On 21/2/2025, the defendant took out a Motion on Notice under section 25 of the *Government Proceedings Act* and sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*. It sought a mandatory order to compel the plaintiff to release to it 6 identified motor vehicles belonging to the defendant plus costs of the Motion.
3. The defendant's case was that the plaintiff was holding the said six (6) vehicles in purported exercise of a lien over them for maintenance fees of Kshs 76,345,525/= which was disputed. The contract of motor vehicle maintenance between the parties was still ongoing. That the defendant required the said vehicles in the condition in which they were as they were needed to discharge critical public duties. That the continued holding of the said vehicles was in breach of section 25 of the *Government Proceedings Act*.
4. In his replying affidavit sworn on 21/2/2025, the plaintiff swore that he was not holding any of the vehicles mentioned in the application under a lien. That the vehicles in his possession were undergoing repair and some could not be repaired for lack of Local Service Orders (LSO) from the defendant. That the application did not relate to the suit.
5. Parties were directed to file submissions which they did and are dated 14/3/2025 and 18/3/2025, respectively. For the defendant it was submitted that the plaintiff had denied holding the vehicles under



a lien. That since the plaintiff had opted to sue for the debt in the sum of Kshs 76,245,525/=, he ought not continue to hold the said vehicles. That the same was in breach of section 25 of the Government Proceedings Act. That if there was any debt, the recourse was to execute against the defendant and not otherwise. The cases of Kenya Breweries Ltd & another v Washington O. Okeyo and Prd Rigs Kenya Ltd v County Government of Machakos (2019) K EHC 4264 (KLR) were cited in support of those submissions.

6. That it was against public policy to continue holding the said motor vehicles which were required for critical services to the public.
7. On the other hand, it was submitted for the plaintiff that there was in place a Service Level Agreement between the parties for the maintenance of the defendant's vehicles. That the suit did not concern the six vehicles. That they had been submitted to the plaintiff for repairs. Two were under repair but the others were waiting for LSO's. That releasing the vehicles would amount to breach of contract.
8. That the bill the subject of the suit does not cover the six (6) vehicles. That the vehicles remain non repaired and would not assist the defendant. That the application was an abuse of court process. The cases of R v National Transport & Safety Authority & 10 others Ex parte James Mugo and Paul Imison & another v Attorney General (2017) eKLR were relied on for the proposition that parties are bound by the terms of their contracts and that government vehicles cannot be held on lien or sold in execution of process.
9. I have considered the rival propositions. This is an application for a mandatory injunction. As in all other applications for interlocutory injunctions, the guiding principles are that an applicant must demonstrate that he has a *prima facie* case with a probability of success that he might suffer loss that is irreparable and if the court is in doubt, it will determine the matter on a balance of convenience (see Giella v Cassman Brown (1973) EA).
10. Mandatory injunctions are generally not to be granted at an interlocutory stage unless there are special circumstances and the case is very clear. The Court must feel a higher degree of assurance that such injunction was properly issued at the trial. In this regard, for a mandatory injunction to be granted, in addition to demonstrating the three principles in the Giella v Cassman Brown; there are the foregoing additional requirements, i.e that an applicant must prove existence of special circumstances and the case must be clear.
11. In the case of Kenya Breweries Ltd and another v Washington Okeyo (2002) 1 EA 109, the Court of Appeal held that there must be special circumstances over and above demonstration of *prima facie* case for an order of mandatory injunction to issue. And even then, only in clear cases where the Court thinks the matter ought to be decided at once.
12. In the present case, the application is made by defendant. As at the time of writing the ruling, the defendant had not filed its defence. It is therefore not clear whether there would be a pending suit in respect of the subject vehicles by way of counterclaim or not. Be that as it may, the Court will determine the application on the basis of the material on record.
13. The main suit is a claim for Kshs 76 million odd, in respect of repair services rendered by the plaintiff to the defendant. The defendant claim that the subject vehicles have been lying with the plaintiff for far too long. That they have not been repaired. That the defendant requires the vehicles in the state in which they are for public use. That they were being held under lien.
14. On his part, the plaintiff alleged that there was still a Service Level Agreement for repairs between the parties. He denied that the vehicles were being held on lien. He averred that the vehicles did



not constitute those for which the bill of Kshs 76 million relate. That in any event, under the law, government vehicles cannot be held on lien or sold in execution of decree.

15. However, on a twist of things, the plaintiff contended that ordering the release of the said vehicles would amount to breach of the contract that is still in force. He relied on the case of *Republic v National Transport & Safety Authority & 10 others (supra)* to buttress his contention that parties are bound by their contractual agreements.
16. The Court finds it difficult to understand the case put forth by the Plaintiff in so far as the application is concerned. At one point he denied holding the subject vehicles later he admitted that the said vehicles were willingly delivered to him for repair. That he was not holding them on lien and that to release them would be in breach of contract. The Plaintiff was taking two contradictory positions.
17. The view the Court takes is that, the defendant's vehicles had been delivered to the plaintiff for repairs. Probably for lack of LSO's, they have not been repaired. No works have been undertaken on them. That they are now required to be taken by the defendant for whatever use, if any.

18. Section 25 of the *Government Proceedings Act* provides: -

- “(1) Nothing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of any Government ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property.
- (2) Where proceedings in rem have been instituted in the High Court or in a subordinate court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Government to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Government, order that the proceedings shall be treated as if they were in personam duly instituted against the Government in accordance with the provisions of this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.
- (3) Any order made in accordance with the provisions of subsection (2) may be upon such terms, if any, as the court thinks just; and, where the court makes any such order, it may make such consequential orders as it thinks expedient.”

19. From the foregoing, it is clear that government property cannot be held on lien for any debt. There is no good reason that have been advanced by the plaintiff for the continued holding onto the said vehicles. He has admitted that they have not been repaired for him to demand payment for those services. He has also admitted that he is not holding them for any lien. In any event, he has already brought a suit for the debt.



20. Further, they are public property which may be required for public use. Their continued holding will not benefit anyone. This is a case where a decision should be made at once. The plaintiff will be paid his claim once he proves it.
21. In view of the foregoing, the Court is satisfied that there exist special circumstances to warrant the grant of the orders sought.
22. Accordingly, the application dated 21/2/2025 is found to be meritorious and is allowed as prayed.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 16TH DAY OF MAY, 2025.

A. MABEYA, FCI Arb

JUDGE

