



**Jeet Motors Limited & another v Caroline (Civil Appeal
E002 of 2021) [2024] KEHC 4688 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E002 OF 2021**

JR KARANJA, J

MAY 2, 2024

BETWEEN

JEET MOTORS LIMITED 1ST APPELLANT

KENYA ORIENT INSURANCE LTD 2ND APPELLANT

AND

CHEPKIRUI CAROLINE RESPONDENT

JUDGMENT

1. The first and second Appellants i.e. Jeet Motors Limited and Kenya Orient Insurance Ltd, were the first and second Defendants respectively in Kericho CMCC No.86 of 2019 in which they were sued by the Plaintiff/Respondent, Chepkirui Caroline, for a declaratory order that their refusal to release Motor Vehicle Reg. No.KCA 975 B and the continued detention of the vehicle constitutes wrongful detention, an order for the release of the Motor Vehicle to the Plaintiff and General Damages for wrongful detention and denial of user of the said Motor Vehicle.
2. After the hearing of the case before the Resident Magistrate's Court at Kericho, Judgment was entered in favour of the respondent against the appellants jointly and severally for general damages in the sum of Kshs.500,000/= . This was on the 17th December, 2020. Being aggrieved, the appellants filed separate Appeals which were herein consolidated and heard together.

The hearing was by written submissions which were filed on behalf of the parties by E. M. Orina & Co., Advocates, Omwenga & Co., Advocates and Mutai Kiprotich & Co., Advocates, respectively.
3. Having considered the appeal, as consolidated, the Supporting Grounds and the rival submissions, the duty of this court was to revisit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (see, Selle -vs- Associated Motor Boat Co. Ltd (1968) E.A. 123).



4. The Plaintiff's case was briefly that her Motor Vehicle Reg. No. KCA 975B was involved in an accident and pursuant to instructions given by the second Appellant, it was taken to the first Appellant for necessary repairs with effect from 11th August, 2018. A letter to that effect was issued by the second Appellant and after completion of the repairs a release letter dated 20th February, 2019 was issued again by the second Appellant.
5. However, the first Appellant/Defendant declined to release the vehicle to the Plaintiff/Respondent Chepkirui Caroline (PW.1) citing existing differences between itself and the second Appellant over some outstanding debts. After a period of time, the vehicle was eventually released to the Plaintiff on 13th July, 2019. The Plaintiff contended that the delay in the release of the vehicle to her by the Defendants/Appellants amounted to wrongful detention of the vehicle and occasioned her loss of business and personal inconvenience. She therefore prayed for general damages for wrongful detention among other prayers.
6. Both Appellants/Defendants filed their respective statements of defence denying the Plaintiff's claim and praying for its dismissal with costs. Whereas the first Defendant/Appellant led evidence in support of its defence through Jitendra Singh Chandra (DW.1), the second Defendant/Appellant did not and purported to close its case without calling any witness. Nonetheless, the burden to establish and prove the claim on a balance of probabilities lay with the Plaintiff.
7. In his testimony, the aforementioned (DW.1) indicated that the first Defendant/Appellant dealt in repairs of Motor Vehicles and that it was instructed by the second Defendant/Appellant to carry out repairs on the Plaintiff's Motor Vehicle. It carried out the mandate after which it received instructions from the second defendants/appellants to release the vehicle second defendant's insured who was the Plaintiff, the lawful owner of the vehicle.
8. Jitendra (DW.1) further indicated that it did not release the vehicle to the plaintiff because it was owed some money by the second Defendant arising out of previous contracts of a similar nature between themselves. The first defendant therefore claimed a lieu over the Motor vehicle.
9. In its findings, the Trial Court concluded that the detention of the Plaintiff's Motor Vehicle by the first defendant after it had completed repairs and after it had been instructed by the second defendant to release it, amounted to wrongful detention for which both the defendants were liable to the Plaintiff in damages.
10. Although the act of detaining the vehicle could not be held against the second defendant as it had completed its obligations with the first defendant and with its insured (PW.1) in relation to repairs of the Motor Vehicle, the Trial Court pegged the second defendant/Appellant liability on alleged breach of duty of care to the Plaintiff in failing to ensure that the vehicle was released. This was a misdirection on the part of the Trial Court as the second defendant fulfilled its obligations towards its insured (the Plaintiff) by having the vehicle repaired and giving instructions to the first defendant to release it.
11. The act of releasing the vehicle to the Plaintiff was independent of the contractual obligation between the first and second defendants. Having completed the repairs and receiving the necessary instructions from the second defendant to release the Motor Vehicle to its lawful owner, the first defendant had a duty of releasing the vehicle to the Plaintiff without delay and if it delayed in doing so without proper justification, then it was liable to the plaintiff for any loss or damage that may have been occasioned to the Plaintiff. Such liability could not be visited on the second defendant/appellant.
12. On the same premises, the first defendant could not claim a lien over the Motor Vehicle since the detention of the vehicle had nothing to do with its contractual obligation with the second defendant



nor was the Plaintiff a party to their contract. The Plaintiff had no cause of action against any of the defendants arising from a contract between themselves for which she (Plaintiff was not a party. Her cause of action was against the first defendant for failing to release the vehicle without delay and this arose on the date of the release instruction on 20th February, 2019.

13. There was no dispute that the vehicle was released on 13th June, 2019, more that three months after the release instruction were given to the first defendant. The plaintiff indicated that in the meantime she suffered business loss and personal inconvenience. However, she did not pray for special damages but general damages only. The award of Kshs.500,000/= made by the trial court was rather excessive. She did not avail tangible evidence to justify the award. It is therefore reduced to the sum of Kshs.200,000/=.
14. In sum, the appeal is allowed with regard to the second Appellant to the extent that the Judgment of the Trial Court against itself is hereby set aside and substituted for an order of dismissal of the case against itself with costs.

With regard to the first Appellant, the appeal is disallowed save for reduction of the award of Kshs.500,000/= general damages for wrongful detention to the sum of Kshs.200,000/=

The second appellant shall have the costs of the appeal as against the Respondent while the Respondent shall have the costs of appeal as against the first Appellant.

Orders accordingly.

DATED, DELIVERED AT KERICHO THIS 2ND DAY OF MAY, 2024.

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J. R. KARANJA

JUDGE

