



Ali v Nyang’ao (Civil Appeal E010 of 2024) [2024] KEHC 8319 (KLR) (11 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8319 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA**

CIVIL APPEAL E010 OF 2024

WA OKWANY, J

JULY 11, 2024

BETWEEN

HEZRON ONGARO ALI APPELLANT

AND

MARY NYAKAMBI NYANG’AO RESPONDENT

RULING

Background

1. The Applicant and the Respondent herein are husband and wife. The Applicant sued the Respondent before the trial court seeking, inter alia, an order of permanent injunction to prevent the Respondent from using motor vehicle Registration No. KDC 356C (hereinafter “the Suit Motor Vehicle”) and an order compelling him to surrender the said vehicle to her.
2. The Applicant’s case was that she purchased the suit motor vehicle using her own resources but was unable to register it in her name at the time of the purchase as she did not have her National Identity Card. She stated that the vehicle ended up being registered in her husband’s name. On 26th March 2024, the trial court rendered a judgment in the Applicant’s favour and directed the Respondent to surrender the suit motor vehicle to the Applicant within 30 days.
3. Aggrieved by the trial court’s verdict, the Defendant/Appellant herein filed the instant appeal.
4. The Respondent/Applicant herein, on her part, filed the application that is the subject of this ruling.

Application

5. This ruling is in respect to the application dated 20th May 2024 wherein the Respondent/Applicant seeks the following orders: -
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2. That pending the hearing and determination of this Application, this honourable Court be pleased to order Officer Commanding Station Magwagwa Police to impound the subject motor vehicle Registration No. KDC 356C to be placed under safe custody and the care of Officer Commanding Station Magwagwa Police pending the hearing and determination of the Appeal (sic) (Application) herein.
3. That upon the hearing and determination of this Application, this Honourable Court be pleased to order for the subject motor vehicle Registration No. KDC 356C to be placed under safe custody and the care of Officer Commanding Station Magwagwa Police pending the hearing and determination of the Appeal herein.
4. That pending the hearing and determination of this Application, this Honourable Court be pleased to order for the Respondent to deposit cash at the court rates in the joint account of the Appellant/Respondent and the Respondent/Applicant's Counsel bank account as security pending the hearing and determination of the Appeal.
5. That costs of this Application be provided for.
6. The Application is brought under Order 1 Rule 3, Rule 14 (4) and Order 40 Rule 7 of the Civil Procedure Rules and is supported by the Applicant's affidavit. In the said Affidavit, the Applicant avers the Respondent has refused/failed to surrender the suit motor vehicle to her despite the clear orders in the judgment delivered in Nyamira CMCC 1818 of 2022 where the Respondent was directed to surrender the said vehicle to her within 30 days. She avers that she is apprehensive that the subject motor vehicle will be wasted or subjected to wear and tear or be involved in an accident if it remains in the Respondent's custody.
7. The Appellant/Respondent opposed the Application through his Replying Affidavit dated 29th May 2024 wherein he avers that he bought the suit motor vehicle and had it registered in his name. He states that he faced financial constraints after the impugned judgment was delivered and sold off the suit motor vehicle to a third party on 22nd March 2021 after consultations with his advocate. He maintains that the prayers sought in the Application will adversely affect the third party who was not a party to the trial court proceedings. He states that he has appealed against the trial court's decision and that the only issue for determination should be security for costs. He proposed to deposit of Kshs. 100,000/= in a joint interest-earning account as security/condition for stay of execution pending hearing and determination of the Appeal.
8. Parties were directed to canvass the Application by way of written submissions. The Applicant filed her submissions while the Respondent opted to rely on his replying affidavit.
9. From the facts of this case, it is not disputed that the parties were husband and wife and that they purchased the suit motor vehicle. The trial court however found that the suit motor vehicle belonged to the Applicant and directed the Respondent to surrender it to the Applicant within 30 days from the date of the judgment.
10. A perusal of the Motor Vehicle Search in respect of the subject vehicle dated 25th May 2024 shows that it is registered in the name of one Naomi Chelangat. Indeed, the Respondent stated that he had already sold off the vehicle to a third party. It is however not clear when exactly the said vehicle was sold to the third party because the Respondent stated that he had sold the car on 22nd March 2021. I note that the Sale Agreement between the Respondent and the original seller is dated 7th May 2021. This means that the Appellant could not have sold the vehicle to the third party in March 2021 as he alleged in his Affidavit.



11. It is however clear that the Respondent sold the car to the third party after the entry of the impugned judgment in the trial court. I say so because he stated, at paragraph 5 of his Replying Affidavit, that he faced financial constraints that compelled him to sell the suit motor vehicle after the delivery of the judgment.
12. In light of the above observations, I find that the Appellant/Respondent's approach in dealing with this matter reeks of bad faith and malice as he was fully aware of the court's judgment directing him to deliver the suit motor vehicle to the Applicant but still went ahead to sell it. He also proceeded to appeal against the said judgment and even sought stay of execution of the judgment over the suit vehicle which was no longer in his legal ownership or physical possession.
13. My finding is that the Respondent's prayer for stay of execution and offer to deposit security for costs reek of mischief and amount to an abuse of court process. To my mind, this is a clear case of outright and deliberate disobedience of a lawful court order.
14. I must reiterate that this Court is a court of equity and that he who comes to equity must come with clean hands. In *Caliph Properties Limited vs. Barbel Sharma & Another* [2015] eKLR, the Court stated:-

“..... He that comes to equity must come with clean hands and must also do equity. The conduct of the Plaintiff in this case betrays him. It does not endear him to equitable remedies. ... He who comes to equity must fulfil all or substantially all his outstanding obligations before insisting on his rights. The Plaintiff has not done that. Consequently, he has not done equity.”
15. Having regard to the reasons that I have stated in this judgment, I find the Applicant's Application is merited and I therefore allow it and direct that the Respondent delivers the suit motor vehicle to the OCS Magwagwa Police Station within 7 days from the date of this Ruling.
16. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NYAMIRA THIS 11TH DAY OF JULY 2024.

W.A. OKWANY

JUDGE

