



**Ndirangu & another v Weston Capital Limited & 2 others (Civil Appeal  
64 of 2020) [2024] KEHC 9053 (KLR) (22 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9053 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 64 OF 2020  
BM MUSYOKI, J  
JULY 22, 2024**

**BETWEEN**

**DAGLAS MUKURI NDIRANGU ..... 1<sup>ST</sup> APPELLANT**

**DANIEL MWANGI THUO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**WESTON CAPITAL LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JUJU INVESTMENT LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**SWIFT CAPITAL LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This is an appeal against judgement of the Senior Resident Magistrate sitting in Ruiru in her civil case number 261 of 2019. By his plaint dated 13<sup>th</sup> August 2019, the appellants filed the suit praying for the following;
  - a. The court orders transfer of motor vehicle registration number KBW 515T to the plaintiffs.
  - b. That the defendants, their servants, agents or any authority be permanently restrained from ever interfering with possession, ownership, use and be condemned to pay any loss incurred due to the illegal transfer of the vehicle.
  - c. Costs and interest of the suit.
  - d. Any other relief that the court deems fit to grant.
2. The appellants' claim was that on 19-07-2018, they entered into an agreement with 1<sup>st</sup> and 2<sup>nd</sup> respondents for sale of motor vehicle registration number KBW 515T (hereinafter referred to as 'the vehicle') at a price of Kshs 1,600,000.00 following which the appellants paid a sum of Kshs 1,268,350.00 to the 3<sup>rd</sup> respondent's account and the balance of Kshs 331,650.00 to the 1<sup>st</sup> respondent.



- Despite this payment, the vehicle which was transferred to the 3<sup>rd</sup> respondent although the appellants were in possession of the same.
2. The 1<sup>st</sup> defendant did not file defence despite having entered appearance. It also did not participate in the main proceedings before the lower court but made appearances in the hearing of the interlocutory application which it did not oppose. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents in their defence dated 5-02-2020 stated that they were one and the same thing. The 2<sup>nd</sup> respondent had changed its name to 3<sup>rd</sup> respondent and the registration of the 3<sup>rd</sup> respondent as the owner of the vehicle was as a result of that change of name. They admitted that the motor vehicle was sold to the appellants by the 1<sup>st</sup> defendant who had pledged it as security to them.
  3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents admitted that the sale was with their concurrence as lenders. After the sale, they tried to transfer the vehicle to the appellant but the transfer was not successful because a caveat had been placed on it by another party who had a claim. They referred to milimani chief magistrate criminal case number 940 of 2019 in which the vehicle was the subject matter. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents stated that they had no interest or claim on the vehicle as the loan had been paid in full.
  4. The testimony of the witnesses is well captured in the proceedings. The 1<sup>st</sup> appellant testified on behalf of himself and the 2<sup>nd</sup> appellant. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents called one witness named Kelvin Onyango Wangoma. This being a first appeal, I am called upon by law to evaluate the evidence produced before the lower court and come to my own conclusion. I have carefully gone through the evidence, pleadings and exhibits produced by the parties in the subordinate court.
  5. Almost all the facts of the case are not disputed. The only dispute in this case as far as I can discern is the respondents' position that they could not transfer the vehicle to the appellants because there existed a caveat against it. The sale of motor vehicle to the appellants by the 1<sup>st</sup> respondent in the circumstances given by the appellant is admitted. It is a common ground that the appellants paid the full purchase price in two installments. A sum of Kshs 1,268,350.00 was paid to the 3<sup>rd</sup> respondent to offset the loan granted to the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent. The balance of Kshs 331,650.00 was paid to the 1<sup>st</sup> respondent in cash.
  6. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents' witness stated that they did not know who had placed the caveat. All that they knew was that the caveat was placed pursuant to a criminal case number 940 of 2019 at the Chief magistrate's court at milimani. Looking at the charge sheet in the said case which was produced by the witness as defence exhibit number 9, the criminal case was registered on 4-06-2019. None of the parties told the court the fate of the criminal case. The witness also produced statements recorded by their employees at the police station. These statements do not disclose the caveator or when it was registered. The court proceedings of the criminal case were not produced.
  7. Apart from a print out allegedly from NTSA, there was nothing to prove who, when and what was the nature of the caveat. The complainant in the charge sheet filed in the criminal case is shown as one Mary Chemutai Kiplagat. I have looked at the copy of records produced by the appellants as their exhibit number 3. The same has the history of ownership of the vehicle. The previous owners shown are Kevin Beja Wabungo, Platinum Credit Limited, Real Time Ventures Limited, Weston Capital Limited and Swift Capital Limited. It is evident that the complainant in the criminal case has never owned the said motor vehicle.
  8. The respondents did not tell the court below how the vehicle changed hands from 1<sup>st</sup> respondent to their sole name. Obviously, the 1<sup>st</sup> respondent must have transferred ownership to the 3<sup>rd</sup> respondent. What baffles me is why none of the parties produced in court the alleged origin of the caveat. A caveat cannot be registered without documentation or at least a disclosure of interest of the person registering



it. In my view, a casual statement that a caveat existed was not enough. The question which begs answer here is, whose burden was it to prove existence of the caveat? He who alleges must prove. It is my view that the burden fell on the respondents. They were the ones who wanted the court to believe that fact. And after proving existence of the caveat, the respondents were under obligation in law to prove that they were prevented from transferring the vehicle by existence of a caveat. I find and hold that the respondents did not discharge this burden. They did not even prove that they attempted to transfer the motor vehicle. A simple screenshot of their online account dashboard would have been sufficient. It is very suspicious to me that the respondents were too close and friendly during their transactions but when it came to transferring the vehicle to the appellants, they purportedly parted ways. The 1<sup>st</sup> respondent would later disappear from the court proceedings after having stated in an affidavit dated 26-09-2019 that he also had no interest in the vehicle.

9. The appellants discharged their obligations under the contract. The respondents had the obligation to meet their part of the bargain by transferring the property in the vehicle to the appellant. Existence of a caveat cannot override their obligations. As the registered owners of the vehicle who sold it to the appellants, the respondents had contractual duty to transfer a clean title to the appellants. Until the property passed to the appellants, all the other intervening issues or actions necessary were in law obligations of the respondents.
10. I note that the appellants paid the purchase price on 19-07-2018. I take judicial notice that transfer of motor vehicles which is now done online requires less than thirty minutes to effect. According to the charge sheet in the criminal case, the 1<sup>st</sup> respondent's director one Victor Nyamwaka who is the accused in the alleged criminal matter was arrested on 30-05-2019. This was almost 11 months after the appellants had paid the purchase price. If the respondents no longer had interest in the vehicle, it beats logic for them to cling on remaining as registered owners for over 11 months. I do not buy the argument by the respondents that the 1<sup>st</sup> respondent's director could not access his NTSA account. If he could not access, how then was the vehicle transferred to the 3<sup>rd</sup> respondent? If the 3<sup>rd</sup> defendant discharged the vehicle after the loan was paid in full, why did it remain the sole owner? The 1<sup>st</sup> and 2<sup>nd</sup> respondent's witness is recorded in his evidence in chief at page 125 of the record of appeal stating that 'there was a fraudulent transfer to the 3<sup>rd</sup> defendant which we think was done by Victor Nyakweka.' With this admission, it follows that even the registration of the vehicle to the 3<sup>rd</sup> respondent should not remain as the same was fraudulent done.
11. The appellant discharged his burden of proof the moment he adduced uncontroverted evidence that he paid the purchase price in full as per the agreement. The sale agreement dated 19-07-2018 which was produced as plaintiff's exhibit number 1 shows at clause 3 that the respondents guaranteed that the vehicle was free from encumbrances. Where such guarantee is given, the seller must ensure that they should deal with any encumbrance which may arise before the transfer. As such, the onus of removing the caveat if any rested with the respondents.
12. I find that the lower court was wrong in dismissing the appellant's suit. The said judgement is hereby overturned, set aside and substituted for an order allowing the appellant's suit in the following terms;
13.
  - a. The respondents are hereby ordered to jointly and severally transfer ownership of motor vehicle registration number KBW 515T to the appellants within sixty (60) days from the date of this judgement.



- b. In default of the respondents complying with order (a) above, the court administrator of the Senior Principal Magistrate's Court at Ruiru shall execute and process all necessary documents to enable the appellants transfer the said motor vehicle to their names.
- c. The respondents shall pay the costs of this appeal and those in the subordinate court.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY 2024**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT**

