



**Wambugu v Northwave Credit Limited & 2 others (Civil Appeal  
E710 of 2021) [2024] KEHC 9311 (KLR) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9311 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E710 OF 2021**

**AB MWAMUYE, J**

**JULY 18, 2024**

**BETWEEN**

**DANIEL GICHIMU WAMBUGU ..... APPELLANT**

**AND**

**NORTHWAVE CREDIT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**VETRANK INVESTMENTS AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**NAFAZ DAUD ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Ruling delivered on 29th September, 2021  
by Hon. A.N. Ogonda (SRM) in Milimani CMCC No. E8377 of 2021)*

**JUDGMENT**

1. The present Appeal is against the Ruling dated 29<sup>th</sup> September, 2021 by which the lower court declined to grant the orders sought by the Appellant in its Notice of Motion Application dated 10<sup>th</sup> June, 2021. The Appellant had sought orders that the 3<sup>rd</sup> Respondent be restrained from interfering, selling, and/or transferring the motor vehicle registration number KDC xxxB. The Appellant had also sought to set aside the sale undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the 3<sup>rd</sup> Respondent, and for further orders for the unconditional release of the suit motor vehicle to him.
2. The Learned Magistrate's reasons for declining to issue the orders sought by the Appellant were as follows:
  - i. The orders sought by the Appellant were in the nature of orders of mandatory injunction, which should only be granted to restore a formerly existing status quo but not to establish a new state of things – as per *Lucy Wangui -v- Minuch Okemba Love* [2015] eKLR;



- ii. The Motor Vehicle in question had never been in the possession of the Appellant since it was cleared and sold to the 3<sup>rd</sup> Respondent before the Appellant could have come into possession;
  - iii. The subject motor vehicle has already been transferred to the 3<sup>rd</sup> Respondent, who is an innocent purchaser without notice of the Appellant's claim as to rights over the motor vehicle;
  - iv. There was no proof of fraud;
  - v. Disputes over loan amounts cannot be the subject of injunctive relief – as per *Pine Court Malindi Limited & Anor -v- Imperial Bank of Kenya and Two Others* [2019] eKLR;
  - vi. The Appellant had admitted indebtedness to the tune of Kes. 901,362.05; and
  - vii. Any loss that the Appellant suffers could be compensated by way of damages.
3. I have considered the Memorandum of Appeal dated 27<sup>th</sup> October, 2021, the Appellant's Written Submissions dated 13<sup>th</sup> June, 2024, the Respondents' Written Submissions dated 5<sup>th</sup> June, 2024, and the record and proceedings of the lower court. To that end, I am satisfied that the Learned Magistrate did not err in law or fact by declining to grant the interlocutory orders sought by the Appellant. The Appellant did not satisfy the threefold conditions for the grant of injunctive orders that was established in the seminal case of *Giella V Cassman Brown & Co. Limited*, [1973] EA 358. Specifically, I am satisfied that the Learned Magistrate correctly found that the Appellant had not established a prima facie case of the required standard, nor had he shown that he would suffer irreparable harm that could not be adequately addressed by way of an award of damages if the orders sought were not granted.
  4. Due to the fact that this is an interlocutory appeal, I will not comment more on the issue of prima facie case. I will however stress that the *Giella* threefold criteria are each independent and distinct, and even if the Appellant were to have established a prima facie case, he certainly did not show and still has not shown how an award of damages would not be adequate in the event that the complained loss occurred and his case was successful.
  5. In the Amended Plaintiff dated 31<sup>st</sup> May, 2021 the Appellant has prayed for “an order for payment of damages for loss of use” and also “payment of damages equivalent to the value of the suit motor vehicle” in the event that the lower court declines to nullify the sale and order for restitution of the suit motor vehicle. Those two final prayers encompass the Appellant's claim and potential losses, and they also buttress the probity of the Learned Magistrate having taken the position that any loss suffered by the Appellant due to the orders sought not being granted could be adequately addressed by an award of damages.
  6. Accordingly, I can only find that the Appeal herein lacks merit.
  7. The Learned Magistrate delivered a well-reasoned decision that relied on well-established and long-settled principles of law. The Appellant moving to the appellate level against that ruling has resulted in the Respondents incurring costs, which it is only just that the Appellant bears.
  8. Consequently, the Appeal is dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18<sup>TH</sup> DAY OF JULY, 2024.**

**BAHATI MWAMUYE**



## **JUDGE**

In the presence of:

Mrs. Githaiga Counsel for the Appellant

Ms. Kimani Counsel for the Respondents

Mr Guyo, Court Assistant

