



REPUBLIC OF KENYA



**World Automobile (K) Ltd v Republic & another (Criminal Appeal
E233 of 2023) [2024] KEHC 11236 (KLR) (Crim) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E233 OF 2023
K KIMONDO, J
SEPTEMBER 24, 2024**

BETWEEN

WORLD AUTOMOBILE (K) LTD APPELLANT

AND

REPUBLIC 1ST RESPONDENT

GONDALIA RUSHI SHUKRAMI 2ND RESPONDENT

*(An appeal from the ruling and order by F. Kyambia, chief Magistrate,
in Makadara Criminal CaseNo. 2081 of 2022 dated 4th August 2023)*

RULING

1. The applicant, World Automobile (K) Limited (hereafter the company), prays for stay of the above-mentioned order pending the hearing and determination of the appeal. The notice of motion is dated 30th August 2023 and supported by the affidavit of its director, Waqas Karil, of even date.
2. The application is contested by the Republic through Grounds of Opposition dated 24th July 2024 and some undated submissions.
3. On 26th July 2024, I heard further arguments from both learned counsel for the appellant and the Republic. The 2nd respondent (hereafter the accused) did not appear.
4. The company claims to be the registered owner of motor vehicle registration number KDC 052L. The vehicle was used to secure bail for the 2nd respondent in the lower court where he was charged with various offences including theft by servant, forgery and being in possession of proceeds of crime.
5. As a condition for his release, the lower court directed that the vehicle's log book be deposited in court. The accused, a foreign national, then absconded and has not been re-arrested. The complainant moved



the lower court to have the vehicle impounded. The court issued the order on 27th March 2023. The investigating officer discovered that the vehicle was in possession of the appellant.

6. The appellant lodged a notice of motion dated 5th April 2023 in the lower court seeking to be enjoined in the criminal case “as a necessary or interested party” and to suspend the impounding order. The prayers were largely declined which then precipitated this appeal. The memorandum of appeal is dated 18th August 2023 raising eight grounds.
7. As the main appeal is pending for hearing, I decline the temptation to comment on its merits. That will be the true province of the first appellate court. But I can safely state the following: The appellant now avers that “it paid valuable consideration for the subject motor vehicle and became the lawful registered owner”. The affidavit at the High Court is scanty and does not give details of the transaction but from the impugned ruling in the lower court, I decipher that the company bought the vehicle “from one Khan Mohamed Ashraf who was authorized to sell the vehicle by the accused”.
8. It is instructive that the proceedings in the lower court were of a criminal nature. It is not disputed that the subject vehicle was used to secure bail for the accused. Its log book was deposited in court for that purpose. As stated earlier, the accused absconded.
9. It is thus baffling how Khan Mohammed Ashraf or even the accused “sold” the vehicle to the appellant in the circumstances. I say that very carefully as the main appeal is pending. I also agree with the learned trial magistrate that the criminal court was ill-placed to determine the issue of ownership of the vehicle at that stage of the proceedings.
10. The lower court also dealt at length with the question of an interested party and the applicable tests. It found that although the appellant had an identifiable stake and could be enjoined for the limited purpose of “agitating its interests in the said vehicle” it was doubtful that it was a necessary party in the criminal proceedings. All those matters are the subject of the main appeal, and the less I say about them, the better.
11. But based on the facts that I have analysed, I find that to stay the order impounding the subject vehicle will defeat the cause of justice. Although the appeal is arguable, I am not satisfied that failure to grant the stay will render the appeal nugatory. Paraphrased, the applicant has not risen to the threshold for grant of stay pending appeal. The upshot is that the entire notice of motion dated 30th August 2023 is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF SEPTEMBER 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of:

Mr. Gikaria for the appellant instructed by Anthony Gikaria & Company Advocates.

Ms. Awino for the Republic instructed by the office of the Director of Public prosecutions.

Mr. Edwin Ombuna, Court Assistant.

