



**Logistics Solution Services Limited v Smarthub Ventures Limited & 2 others (Civil Appeal E223 of 2024) [2024] KEHC 12777 (KLR) (Civ) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12777 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E223 OF 2024  
JN MULWA, J  
OCTOBER 24, 2024**

**BETWEEN**

**LOGISTICS SOLUTION SERVICES LIMITED ..... APPELLANT**

**AND**

**SMARTHUB VENTURES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SAMMY AMBOGO AKUNGWI ..... 2<sup>ND</sup> RESPONDENT**

**HUDUMA CREDIT LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 16/2/2023, brought under the provisions of Section 1A, 1B, 3A and 63C of the *Civil Procedure Act*, Order 42 Rules 6 Order 51 Rules 1 and 3 of the Civil Procedure Rules, the Appellant seeks the following orders:
  1. Spent
  2. That a temporary injunction do issue restraining the respondents either by themselves/ agents and or servants from repossessing, disposing of, transferring and/or in any other way interfering with the appellant's ownership over motor vehicle registration number KDL 445Z pending the hearing and determination of this application.
  3. That a permanent injunction do issue restraining the respondents either by themselves/ agents and or servants from repossessing, disposing of, transferring and/or in any other way interfering with the appellant's ownership over motor vehicle registration number KDL 445Z pending the hearing and determination of this suit.



4. That the physical custody of Motor Vehicle Registration Number KDL 445Z be retained by the appellant as the appeal is heard and determined.
  5. That the orders herein be served upon the National Transport and Safety Authority and Nairobi County Police Officer to ensure compliance and enforcement.
  6. Any other relief that this court may deem fit to grant.
  7. That the costs of this application be provided for.
2. In the first instance the court finds that this motion is premised on irrelevant provisions of the law – order 42 Rule 6(2) CPR which provides for conditions that an applicant ought to meet for grant of orders of stay of execution pending appeal.
  3. The prayers sought by the applicant are for orders of injunction pending appeal that are provided for under Order 42 Rule 6 (6) CPR. It provides as hereunder:-
    - “(6) Notwithstanding anything Sub-rule (1) of this rule the High Court shall have power in exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with”.
  4. The court is therefore empowered under the above Sub-Rule (6) to consider the application. The background to the impugned subordinate ruling are well stated by both parties herein in their respective affidavits and submissions.
  5. The application is based on:-
    - i. The Appellant herein was the registered owner of the motor vehicle registration number KDL 445Z Toyota Vitz up to 18/10/2023.
    - ii. The Appellant and 1<sup>st</sup> Respondent vide an agreement dated 11/10/2023 agreed to transfer ownership of motor vehicle registration number KDL 445Z to the respondent’s Managing Director- the 2nd Appellant on terms.
    - iii. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein were to pay Kenya Shillings One Million, One Hundred and Eighty Thousand (Kshs. 1, 180,000/=) to the appellant upon successful transfer of the motor vehicle.
    - iv. That on 14/10/2023, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did an undertaking through their company to clear the outstanding amount within thirty (30) days.
    - v. That the appellant immediately and successfully initiated the transfer to the 2<sup>nd</sup> Respondent through the NTSA portal who later obtained a loan from and enjoined the 3<sup>rd</sup> Respondent as a co-owner without the appellant’s consent.
    - vi. That the 2<sup>nd</sup> Respondent has since switched off his phone and their offices have remained closed and their whereabouts unknown.
  6. The application is opposed by a Replying Affidavit dated 6/3/2024 by Jimal Ibrahim Hassan, the Director of the 1<sup>st</sup> Respondent Company. He states that the Appellant, having fully transferred ownership of the motor vehicle to the 1<sup>st</sup> Respondent through an undertaking issued by the 1<sup>st</sup> Respondent with no encumbrance collateral pledged, cannot seek to limit the 1st Respondent’s dealings with the motor vehicle.



7. In the case *Albert Marco Corderto -vs- Cypperr Enterprises Ltd HCCC No 2314 of 1996*, the court held that an injunction may not issue if it is proved to the satisfaction of the court that the applicant is undeserving of such equitable relief. Additionally, in *Mrao -vs- First American Bank Ltd and Others (2003) KLR 125* a prima facie case is described as a case in which on the material presented to the court or tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposing party as to call for an explanation or rebuttal from the latter.

8. In my considered view, the applicant has established a prima facie case capable of succeeding. It is my finding also that the applicant would suffer irreparable loss should the motor vehicle be repossessed by the Respondents as such would be an infringement of his rights. The respondent should make final payment of the said motor vehicle so as to obtain a good title which can be passed on to the 3<sup>rd</sup> Respondent.

From the foregoing, I find that the applicant has demonstrated that he is deserving of orders sought.

9. This court has considered the application. The issue for consideration is whether the applicant has demonstrated that it is deserving of prayers sought. The applicant has a burden of proving that it has met the threshold for grant of an order of injunction. It is also worth noting that grant of an order of injunction is a discretionary remedy by the court based on the facts of each case.

The principles upon which such order may be granted were stated in the case *Giella vs. Cassman Brown Ltd [1973] 35* among others that:

- i. The applicant must satisfy the court that he has prima facie case with a probability of success.
- ii. That the applicant will otherwise suffer irreparable injury and loss, which cannot be compensated in damages.
- iii. If in doubt, the court will determine the application on a balance of convenience.

10. At the relevant material times, the subject motor vehicle registration No. KAL 445Z was in possession of the Applicant/Appellant, which position was reiterated by the trial court by an order that the 3<sup>rd</sup> Respondent return physical possession of the vehicle to the applicant.

11. The applicant in circumstances numerated in the supporting affidavit had transferred the legal ownership of the vehicle to the 1<sup>st</sup> Respondent on strength of an undertaking by the 1<sup>st</sup> Respondent.

It is evident that by the ruling of 14/02/2024 by the trial court, despite finding that the subject motor vehicle had been sold by the applicant to the respondents, the physical factual transfer of the same was never made as the full purchase price had not been made with a balance of Kshs. 1,180,000/- not yet paid to the appellant.

12. In terms of the sale agreement dated 11/10/2023, legal ownership of the vehicle was transferred to the 2<sup>nd</sup> Respondent upon terms that the vehicle would be physically transferred to the 2<sup>nd</sup> Respondent upon successful transfer.

On 14/10/2023 the 1<sup>st</sup> and 2<sup>nd</sup> Respondents undertook to pay the outstanding sum within 30 days which they never did, thus breached the terms of both the sale agreement and the undertaking.

13. Whereas the Respondents submit that the appellant's appeal has no chances of success, it is trite that the seller of a property cannot claim ownership of a property when it has sold the same and been paid the full purchase price.

14. On the converse, it is also without a doubt that the seller of a chattel or property cannot part with the physical possession of the same if the full purchase price has not been paid to it. That brings into play



the matter of the respondents undertaking to pay the balance of the purchase price. If not paid it would be unconscious for the court to order that in the absence of the full purchase price, the physical possession of the vehicle be handed over to the Respondents before the full purchase price is paid.

15. The court is therefore satisfied that the appeal particularly at the 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal there is high chance that it will be successful.
16. The court has considered the cited authorities particularly by the applicant in regard thereto.

In consideration of the case of Pacific Motors Auctions PTY ltd v. Motor Credits (Hire Finance) Ltd [1965] AC, the Privy Council explained that

“to protect an innocent purchaser who is deceived by vendor’s physical possession of goods or documents and who is inevitable unaware of legal rights which fetter the apparent power to dispose”

17. Additionally, Section 19 of the [Sale of Goods Act](#) states:-

19) Property in specific or ascertained goods passes when intended to pass.

1. Where there is a contract for sale of specific goods or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
  2. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case (Emphasis mine).
18. Considering the harm and loss the applicant may incur if the injunctive orders are not granted subject motor vehicle it is the applicants submission that such order would infringe his rights over ownership of the vehicle the respondents having failed to pay the balance of the purchase price which in his view would be a greater loss have balance of inconvenient favours him, citing the case of Pius Kipchirchir Kogo V. Frank Timeli Tenai [2018] eKLR.
  19. For the foregoing the court finds merit in the appellants application dated 16/02/2023. The upshot is that prayers No. (c) and (d) are allowed.

Costs of the application shall abide by the outcome of the appeal.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**JANET MULWA**

**JUDGE**

