



REPUBLIC OF KENYA



P.S.O. Alando t/a Alando & Co. Advocates v Kashama & another (Miscellaneous Civil Application 194 & 195 of 2012 (Consolidated)) [2023] KEHC 3270 (KLR) (18 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3270 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 194 & 195 OF 2012 (CONSOLIDATED)
DKN MAGARE, J
APRIL 18, 2023**

BETWEEN

P.S.O. ALANDO T/A ALANDO & CO. ADVOCATES DECREE HOLDER

AND

BENARD KASHAMA JUDGMENT DEBTOR

AND

FARID YUSUF ABDULMAJID OBJECTOR

RULING

1. After having a worthy vacation, I am confronted with this matter. In reality there are two matters, that is Misc. 195 of 2012 and Misc. 194 of 2012. They were initially before Justice Wangari who, out of abundant of caution decided to have them heard before me. I thus have the Odious task of completing these matters. My understanding is that 2012 matters ought to have been closed by now. However, that is a discussion for another day.
2. This matter HC Misc. 194 of 2012, an application was filed by Farid Yusuf Abdulmajid as an objector.
3. The basis is that the objector is the owner of Motor vehicle make Land Rover Model Range Rover Chassis No. [withheld] Registration No. [withheld]. They posit that they wholly own the said motor vehicle.
4. In an affidavit sworn by Farid Yusuf Abdulmajid he states that the said motor vehicle was proclaimed on 16/2/2023.
5. He states that as at 16/2/2023, the motor vehicle was at his residence in Nyali and he had been in possession, since 25/3/2021. What he attaches was a sale agreement dated 25/3/2021. He also attaches an Mpesa statement, showing that there has been a total transactions worthy of Kshs. 472,000/= from 1/1/2021 to 31/12/2021.



6. There are certain payments made to the Defendant. The same are not in line with the ownership agreement to be particularly clear, there is nothing to show transfer to the objector.
7. What is not in doubt, is that out of the possible 2.7 million, not more than 500,000/= has been evidenced to have been paid. Payment in cash for amounts exceeding Ksh. 10,000/= are at the payer's risk. He has not given evidence that he had the said amount.
8. The Replying affidavit by Paul Senate Omondi Alado was to the effect that the accompanied the auctioneers to Nyali area to attach the said motor vehicle. He narrates a long story which remains uncontroverted.
9. I can read through mischief in this matter. The agreement is fictitious. I don't know what the Filtered Mpesa statement was meant to achieve other than mislead the court. I am not satisfied on the ownership by the objector. I therefore dismiss the objection proceedings. It is clear the said motor vehicle belongs to the decree holder.
10. At the very least, if transfer had not been done, nothing could have prevented the Applicant from attaching a copy of insurance showing that he is the insured. Nothing real puts the applicant in the scene as an owner. He is a busy body.

Determination

- a. The objection proceedings have no merit and are therefore dismissed with costs of Kshs. 60,000/= to the decree holder.
- b. The Auctioneers should proceed to sale of the attached goods, from the point they left.
- c. Both the decree holder and the objector to bear any storage charges that accrued from the date of objector to date, if any.
- d. The file is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 18TH DAY OF APRIL, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

DENNIS KIZITO MAGARE

JUDGE

In the presence of:

Olwande for Mkan for the Decree holder

Waliualah for the objector.

Court Assistant - Firdaus

