



REPUBLIC OF KENYA



KENYA LAW
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**Oney Credit Ltd v Macharia & another (Civil Appeal (Application)
E644 of 2022) [2023] KEHC 18402 (KLR) (Civ) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL (APPLICATION) E644 OF 2022

AN ONGERI, J

MAY 23, 2023

BETWEEN

ONEPAY CREDIT LTD APPELLANT

AND

EDWARD MWANGI MACHARIA 1ST RESPONDENT

STANLEY MACHARIA MWANGI 2ND RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated December 31, 2022 seeking for the following orders;
 - i. This application be certified urgent and dispensed with ex-parte in the first instance.
 - ii. This application be admitted and heard during the current court's vacation due to its urgency.
 - iii. Pending the hearing and determination of this application, a mandatory injunction be and is hereby issued directing the Appellant/Respondent to immediately and unconditionally release motor vehicle KCS 795N to the 2nd Applicant.
 - iv. Pending the hearing and determination of the main appeal, a mandatory injunction be and is hereby issued directing the Appellant/Respondent to immediately and unconditionally release motor vehicle KCS 795N to the 2nd Applicant.
 - v. The court be pleased to order the Appellant/Respondent to immediately pay for all storage charges accrued from the August 15, 2022.
 - vi. The court be pleased to issue such other and/or further orders as it deem just and expedite.



- vii. The OCPD Kiambu to ensure compliance with this court's orders.
- viii. The cost of this application be in the course.
2. The application is based on the grounds on the face of it and supported by the affidavit of the Applicant dated December 31, 2022 in which it is deposed that the court delivered a ruling on December 21, 2022 dismissing the respondent's application dated November 16, 2022 primarily on account of the framing of the orders sought. The court did not delve into the merits of the application.
3. The subject motor vehicle is still at the auctioneer's yard at ridgeways along Kiambu road and continues to accumulate storage charges on a daily basis. The said car is also not under any form of maintenance and is susceptible to developing mechanical problems the longer it remains in the yard.
4. That the 2nd applicant is undergoing immense hardship from lack of use of the said motor vehicle. That in the interest of justice the court should order the release of the motor vehicle to the applicants on such conditions it deems fit. That he remains the owner of motor vehicle KCS 795S and the respondent would not suffer any prejudice if the vehicle was to be released to him.
5. The application was opposed by the replying affidavit of Nazir Madatali dated February 23, 2023 where he deposed that the subject motor vehicle was proclaimed and later attached on July 25, 2022 by Laar Auctioneers. The auctioneers advertised it for sale on July 26, 2022 in the Standard Newspaper for an auction sale scheduled for August 3, 2022. The subject vehicle was sold by way of public auction to one Evanson Nganga Ngugi who emerged as the highest bidder.
6. He indicated that therefore any issuance of mandatory order for release of the vehicle will be in vain since subject is in the hands of a third party not party to this suit.
7. The parties filed written submission in the application as follows;

The 2nd respondent/applicant submitted that he has established that special circumstances exist in this matter to warrant the grant of a mandatory injunction. That there is no way of knowing when the appeal will be determined and the subject motor vehicle still remains at the auctioneer's yard along Kiambu road.
8. It was his contention that the continued detention of the subject motor vehicle is of no benefit to any of the parties but rather occasioning the 2nd respondent/applicant undue economic hardship. That it is therefore in the interest of justice that the court should order the release of the said motor vehicle.
9. The appellant respondent submitted that the applicant herein has not made out a clear-cut case for the issuance of the mandatory orders sought. He did not attach any annexures to his application to support the allegation that the motor vehicle is at the storage yard along Kiambu Road and that its accumulating charges.
10. The sole issue for determination is whether a mandatory injunction should issue directing the Appellant to release motor vehicle registration no. KCS 795N to the 2nd Respondent Stanley Macharia Mwangi.
11. In the case of *Kenya Breweries Limited v Washington Okeyo* [2002] eKLR cited in the case of *Paul Mwaniki Gachoka & another v Nation Media Group Limited & another* [2019] eKLR referenced above, the court reasoned that:

“A Mandatory Injunction can be granted on an interlocutory application as well as at the hearing but, in the absence of special circumstances it will not normally be granted.



However, if the case is clear, and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied or if the defendant attempted to steal a match on the plaintiff, mandatory injunction will be granted on an interlocutory application.”

12. I find that the Appellants in their affidavit here stated that the motor vehicle was sold to a 3rd party.
13. In the circumstances the application dated December 31, 2022 has been overtaken by events.
14. It is trite law that courts do not act in vain. The only recourse here is to expedite the appeal. The court had granted stay of proceedings.
15. In view of the urgency of this matter I direct that the Appellant files the record of appeal within 14 days of this date.
16. This case will be mentioned on May 30, 2023 for admission of the record of appeal and directions on the hearing of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23RD DAY OF MAY, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant/Respondent

..... for the 1st Respondent/Applicant

..... for the 2nd Respondent/Applicant

