



REPUBLIC OF KENYA



**Ngao Credit Limited & another v Simiyu (Civil Appeal E33 of 2020)
[2023] KEHC 19160 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E33 OF 2020**

A MSHILA, J

JUNE 16, 2023

BETWEEN

NGAO CREDIT LIMITED 1ST APPELLANT

MACKINNON NYONGESA 2ND APPELLANT

AND

CYRUS NYONGESA SIMIYU RESPONDENT

*(Being an appeal against the Ruling of the Senior Resident Magistrate
Hon. J. A. Agonda delivered at the Senior Principal Magistrates Court
at Ruiru on 2nd December 2020 in Ruiru SPMCC No. 305 of 2020)*

JUDGMENT

1. *Vide* a Complaint filed on 21/08/2020, the Respondent prayed for judgment against the Appellants jointly and severally for;
 - a. A declaration that the loan agreement between the appellants and the respondent is illegal, null and void.
 - b. An order directing the appellants to release motor vehicle registration number Nissan Blue Bird to the respondent.
2. The Respondent avers that on or around October 2018, the 1st Appellant, advanced ksh 175,353/= to him where motor vehicle registration number Nissan Blue Bird acted as security and both parties got registered as joint owners of the said vehicle.
3. The Respondent also stated that the Appellants escalated the loan amount to ksh 529,901/= with an interest rate that was 300% of the principal amount the same being oppressive and illegal hence should



- be declared null and void. He sought for an order compelling the Appellants to restore the respondent's motor vehicle which they had attached without prior proclamation.
4. On the same day, the Respondent filed a Notice of Motion under Certificate of Urgency for orders that;-
 - a. The defendants by themselves, their agents, servants and/or employees be restrained from selling motor vehicle registration number Nissan Blue Bird either by public auction or private treaty pending the inter partes hearing of this application.
 - b. The defendants be ordered to release motor vehicle registration number Nissan Blue Bird to the plaintiff pending the hearing and determination of the suit.
 5. The application was based on the grounds that the defendants should not charge interest or exercise statutory power of sale as they are not a bank. Also the interest charged being 300% was said to be oppressive and illegal.
 6. The court after considering the application issued an order that *status quo* be maintained for 14 days from the date thereof.
 7. Subsequently, on 8th September, 2020, the Appellants sold the suit motor vehicle to one Jescah Loko Kathimbu. Nonetheless, the Respondent on 24th September, 2020, made an oral application that the suit motor vehicle be availed at Ruiru Police Station. The Appellants opposed the application as the suit motor vehicle had already been sold to a 3rd party. Nevertheless, the court delivered its ruling granting the Respondent's prayer. At this juncture, on 29/9/2020, the Appellants filed their application for a review of the orders of the court made on 24/9/2020. On 2/12/2020, the court delivered its ruling on the said application for review.
 8. The Appellants being dissatisfied with the ruling of the lower court and have preferred the instant Appeal. In their Memorandum of Appeal, they have listed six grounds of appeal as follows:
 - a. The learned Magistrate erred in fact and in law in allowing the Respondent's application at the Subordinate Court dated 21st August 2020 and dismissing the Appellants' application dated 29th September 2020.
 - b. The learned Magistrate erred in fact and in law in finding that the interim orders granted on 21st August 2020 for 14 days were to expire on 9th September 2020.
 - c. The learned Magistrate erred in fact and in law in finding that tabulation of 14 days from the date of the interim order of 21st August 2020 does not include the weekends.
 - d. The learned Magistrate erred in fact and in law in issuing the orders on 2nd December 2020 yet the subject motor vehicle was already sold to a third party to the suit.
 - e. The learned Magistrate erred in fact and in law in terms of the principle of computation of time.
 - f. The learned Magistrate erred in fact and law by failing to appreciate that an innocent third party had acquired property rights in the subject motor vehicle registration number
 9. The court directed the parties to canvass the appeal by way of written submissions.



Appellants Case

10. The Appellants submit that where time allocated for subsistence is 14 days, Sundays are not counted as such the orders of *status quo* issued on 21/9/2020 lapsed on 7/10/2020 and the same were not extended. Reliance was placed on the case of *National Social Security Fund v John Ochieng Opiyo* (2005) eKLR. In conclusion, the court was urged to allow the appeal as there was no court order capable of being disobeyed.

Issues For Determination

11. This court has read and considered the applications by both parties in the lower court and the appellants' submissions herein and have framed the following issues for determination;
- a. Whether the trial court was correct in its computation of time.
 - b. Whether the sale of the suit motor vehicle was valid.

Analysis

12. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

Whether the trial court was correct in its computation of time.

13. Computation of time is governed by *the Constitution*, the *Interpretation and General Provisions Act* and Order 50 of the *Civil Procedure Rules*, 2010.
14. Article 259(5) of *the Constitution* provides that:-

“in calculating time between two events or any purpose under this constitution, if the time is expressed;

- (a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included,

.....

15. Section 57 of the *Interpretation and General Provision Act*, Cap 2 Laws of Kenya states as follows:-

“In computing time for the purpose of a written law, unless the contrary intention appears-

- a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which that event happens or the act or thing is done,



- b) if the last day of the period is Sunday, or a public holiday or all official non-working days (which days are in this Section referred to as excluded days), the period shall include the next following day not being an excluded day.
- c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done on the next day afterwards, not being an excluded day.
- d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time."

16. Order 50 Rule 2 of the [Civil Procedure Rules](#) provides as follows:-

"Where any limited time less than 6 days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day and Good Friday and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time."

17. Order 50 Rule 3 of the [Civil Procedure Rules](#) provides as follows:-

"Where the time for doing any act or taking any proceedings expires on a Sunday or other day on which the offices are closed and by reasons thereof, such act or proceeding cannot be done or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open."

18. In computing time, where the time within which to do a certain act is limited by statute, the law as indicated above provides that public holidays and weekends are only excluded when the period for doing the said act is less than six days. This therefore, means that if the stipulated period is more than six days, like in the case herein, public holidays and weekends are not excluded in computation of time. However, public holidays and weekends may be excluded where the stipulated period is more than six days in instances where the last day of computation falls on a public holiday or on a weekend. In that case the said holiday or weekend is excluded in computation and the following and/or next day is included in computation.

19. In its ruling, the trial magistrate was of the view that the Appellants had miscalculated the days by including the weekends as the same are not working days. The court was of the view that the interim orders were to expire on 9th September, 2020, when the same were extended.

20. The trial court ordered that *status quo* be maintained for 14 days from the date thereof and it was issued on 21st August, 2020. This meant that the orders were to expire on 4th September, 2020. The suit motor vehicle was sold on 8th September, 2020 and the respondent had not sought the court for extension of the court's order maintaining *status quo* which had already expired on 4th September, 2020.

21. In this regard, this court notes that that the correct date when the order maintaining status quo was to expire was on 4th September, 2020 and on this date the said orders were not extended.

22. See the case of [Longinus Oroni Murunga v David Masika Mafumbo](#) [2017] eKLR where the Court of Appeal held that in including weekends the High Court had computed time correctly.



23. In this instance it is this courts considered view that the trial court erred in its understanding of the law in regard to computation of time.

Whether the sale of the suit motor vehicle was valid.

24. In respect of the validity of the sale to a 3rd party, this court is satisfied that the sale was valid having being effected on 8th September, 2020 when there existed no restraining orders.

Findings & Determination

25. In the light of the forgoing reasons this court makes the following findings and determinations;

- i. The appeal is found to have merit and it is hereby allowed.
- ii. The ruling and orders by the trial court issued on 2nd December, 2020 are hereby set aside and the Appellants' application dated 29th September, 2020 is hereby allowed.
- iii. Each party to bear their own costs of this appeal.

Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 16TH DAY OF JUNE, 2023.

A. MSHILA

JUDGE

