



**Amin v ASL Credit Limited (Civil Appeal E102 of 2021)  
[2023] KEHC 20390 (KLR) (Commercial and Tax) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20390 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E102 OF 2021  
JWW MONG'ARE, J  
JULY 17, 2023**

**BETWEEN**

**BHAI OMAR AL AMIN ..... APPELLANT**

**AND**

**ASL CREDIT LIMITED ..... RESPONDENT**

*(Mabeya J vide a ruling delivered on November 17, 2021)*

**RULING**

1. Before the court is the Appellant's Notice of Motion Application dated November 19, 2021 brought inter alia under Section 63 (e), 75(1)(h), and 79(g) of the Civil Procedure Act; Order 42 Rule 6(6) & (9) and Order 43 Rule 1(u) and 2 of the Civil Procedure Rules and Section 15 and 16 of the Hire Purchase Act.
2. The Applicant sought an order for the release of Motor Vehicle Registration Number xxxx to the Appellant pending the determination of the Appeal. Secondly the Appellant seeks, pending the determination of this appeal, an order of injunction restraining the Respondent and/or its agents from repossessing, advertising, selling or interfering in any way with her ownership and possession of motor vehicles registration numbers xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx, xxxx and xxxx (the suit vehicles).
3. The grounds of the application were that the Applicant filed the suit Milimani Commercial CMCC No 1111 of 2020: Bhai Omar Al Amin vs ASL Credit Limited wherein she simultaneously filed an application for a temporary injunction to restrain the Respondent from repossessing and selling certain motor vehicles. The lower court dismissed the said application vide a ruling delivered on December 18, 2020. The Applicant was aggrieved by the said ruling and moved the High Court in Miscellaneous



Case No E276 of 2021 Bhai Omar Al Amin vs ASL Credit Limited where she sought leave to appeal against the lower court ruling out of time and for an injunction pending the intended appeal.

4. That the application was heard and partially allowed by Mabeya J vide a ruling delivered on November 17, 2021 whereby he found that the Applicant had not established a case for the grant of an injunction pending the hearing and determination of her intended appeal but allowed the Applicant leave to file an appeal out of time.
5. The Applicant argued that her appeal has high chances of success and that the suit vehicles are now exposed to illegal repossession which actions threaten to paralyze her business operations and expose her to irreparable losses.
6. In opposition the Respondent filed a Replying Affidavit sworn on November 2, 2022 by Daniel Wandera. He stated that on a preliminary jurisdictional issue, that the subject application is res judicata as it raised issues similar to those in the Applicant's Notice of Motion Application dated April 19, 2021 wherein she sought orders of injunction pending the determination of its appeal and that Mabeya J delivered a ruling dated November 17, 2021 and found that the Applicant had not met the grounds for a grant of injunction pending appeal.
7. Before I consider the other contents of the Respondent's Replying Affidavit, I will consider the issue of res judicata first.
8. The ruling dated November 17, 2021 is not attached as evidence by the Respondent in its Replying Affidavit, however, a look at the ruling on Kenya Law database indicates that the Applicant, in Miscellaneous Civil Application E276 of 2021, sought leave to file an appeal out of time against the ruling of the lower court and a temporary injunction to restrain the Respondent from repossessing, advertising, selling or interfering in any way with her ownership and possession of the suit vehicles, pending hearing and determination of her intended Appeal.
9. Under paragraph 39 of the ruling of November 17, 2021, the court found that the Applicant had not established a case for the grant of an injunction pending the hearing and determination of her intended appeal. Further the court held that damages would be an adequate remedy in this case since the values of the suit vehicles are quantifiable, however on the other hand granting an injunction in the circumstances would have inflicted greater hardship on the Respondent as the debt continued to accrue late payment charges which would soon outstrip the value of the suit vehicles whose values are bound to depreciate overtime.
10. The prayer for an injunction in Miscellaneous Civil Application E276 of 2021 is exactly similar to the prayers in this application before me which essentially seeks an injunctive order to restrain the Respondent from dealing in any manner with the suit vehicles.
11. It is clear that the instant application is a total replica of the one that was filed in Miscellaneous Civil Application E276 of 2021. The court already found that the Applicant did not meet the threshold for the injunctive orders that it now prays for before this court. The Applicant is merely seeking a second bite at the cherry by filing the instant application and is in breach of the res judicata principle.
12. Section 7 of the Civil Procedure Rules states:-

' No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court



competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.'

13. The court's hands are tied as the instant application is res judicata and it does not have jurisdiction to hear and determine it further. This court cannot sit on appeal on its own decision.
14. On this ground alone, the instant application fails and is struck out in its entirety with costs awarded to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2023**

.....

**J. W. W. MONG'ARE**

**JUDGE**

**In the Presence of:-**

- 1) Mirie for the Appellant/Applicant.
- 2) Ms. Mwangi for the Respondent.
- 3) Sylvia- Court Assistant

