



**Landluck Investments Limited v Inspector General of Police & another (Civil Case 116 of 2013) [2023] KEHC 19648 (KLR) (4 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19648 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 116 OF 2013  
HK CHEMITEI, J  
JULY 4, 2023**

**BETWEEN**

**LANDLUCK INVESTMENTS LIMITED ..... PLAINTIFF**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff's plaint dated 9<sup>th</sup> September, 2013 prays for judgement against the defendants for several orders including;
  - a. Return of the lorry as it was on 30<sup>th</sup> September, 2012 or value of the same.
  - b. Loss of income at Kshs.42, 000/per day from 2<sup>nd</sup> May, 2013 till payment in full.
  - c. Costs of the suit.
  - d. Interest at court rate from 2<sup>nd</sup> May, 2013 till full payment
  - e. Any other relief that this honourable court may deem fit and just to grant.
2. The plaintiff claims that he was at all material times the registered owner of Motor Vehicle Registration No. KBJ 574J FH 215 Mitsubishi Lorry. That on or about 26<sup>th</sup> November, 2012 while the said lorry was parked at Kikopey, Gilgil area, the same was stolen by unknown people and the matter was reported at Naivasha police station which undertook investigation. Further, that on or about 28<sup>th</sup> April, 2013 the said vehicle was traced in Kapenguria police station bearing a new number plate registration number KBH 318W.
3. The plaintiff averred further, that after its managing Director identified the Lorry in Kapenguria the same was removed and taken to Naivasha police station where further investigation was to be



- conducted. That upon delivery of the lorry to Naivasha police station on 30<sup>th</sup> April 2013 by its director and his return thereafter, he could not find the lorry only to be told that the same was released to a person claiming to be the owner despite it having made a report of theft of the said vehicle.
4. The plaintiff went onto aver that it was its case that the said lorry was either sold by the defendants' agents or servants or that the defendants negligently and in collusion with the 3<sup>rd</sup> party deliberately sold the vehicle away. That as a result of the defendants act it has suffered both loss and damages. Further, that despite Plaintiff's/Managing Director's reporting the matter to the Inspector General of Police, Director of CID and the Provincial Police office Rift Valley no recovery had been made making the institution of this case necessary.
  5. Additionally, that on 26<sup>th</sup> May, 2013 the plaintiff served the 2<sup>nd</sup> defendant with Statutory Notice under cap 40 laws of Kenya but the notice went without response. That it was its case that the defendants were under a legal duty to compensate it for the lorry and loss of income as particularized in the plaint.
  6. The defendants in their joint written statement of defence dated 28<sup>th</sup> March, 2014 averred that they were strangers to the averments made in paragraphs 4,8,9 and 16 of the plaint and the plaintiff was put to strict proof thereof. The defendants also denied the contents of paragraphs 5, 6, 7, 10, 11, 12, 13 and 14 and the plaintiff was put to strict proof thereof. The defendants averred further that if indeed the motor vehicle registration number KBH 318W was released which is denied, then the release was made after the owner of the said vehicle produced original ownership documents and the plaintiff was put to strict proof to the contrary. It was the defendants' contention that the claim as taken out, drawn and filed did not disclose a cause of action against them and that they would raise a preliminary objection in limine to have the entire suit dismissed.
  7. During hearing, Ahmed Chege Ikira the plaintiff's Managing director testified as PW1. He testified that he recorded his statement on 9<sup>th</sup> September 2013, the same was filed on 23<sup>rd</sup> December 2013 and that he wished to produce and adopt the same together with the bundle of documents filed on the same date.
  8. He testified further that the plaintiff bought motor vehicle registration number KBJ 574J a Mitsubishi lorry from Crater Automobile for Kshs. 5.3 million. That the said lorry was used to transport grass from Nakuru to Ruiru go downs then they would sell them and on 26<sup>th</sup> September 2012 the driver Samuel Muraya reported that they had been robbed off the vehicle at Kikopey. The theft report was made at Gilgil police station and he was called by the OCS who informed him that they had arrested the driver to investigate the robbery.
  9. PW1 testified further that on 29<sup>th</sup> April 2013, together with his worker Peter Gitau Kamau they went to Kapenguria after their agent told them that there were vehicles detained there at the police station. That they found their vehicle there due to the model, chassis and engine number was also confirmed from the duplicate keys together with ignition key number. That he went back to Naivasha and reported that they had found the vehicle but it had been cut off at the top and the registration number changed to KBH 318 W. The said vehicle was brought to Naivasha by the police officers and on 30<sup>th</sup> April 2013 when he went there, he was told by the OCPD to come back on 21<sup>st</sup> May 2013 but when he returned on the said date the vehicle was not there and the OCPD had gone on leave.
  10. PW1 went to testify that an officer by the name Muriuki told him that the vehicle had been released and so he went and reported to Kiambu police station, later to the Inspector General who sent other officers to investigate at Naivasha. The P.P.O ordered that the vehicle be released back to the station but the same was not done up to now and that was why he had filled the instant suit. It was PW1's testimony that his vehicle was given to one Paul Muiruri Mwangi under a different registration number, the said



vehicle had never been brought to station and he was therefore seeking compensation worth the value of his vehicle, loss of business and cost of the case.

11. The plaintiff case was closed at this point but later re-opened and came up in court on 8<sup>th</sup> March 2022. PW1 testified that he filed the matter on 27<sup>th</sup> May 2013. That on 19<sup>th</sup> January 2022 he filed bundle of documents which he wished to rely on, that he had sued the Inspector General because the vehicle was taken from their hands at Naivasha and one Matthew Mbaya SSP had been found culpable by the police. Also, that the Attorney General was sued because the vehicle disappeared at the station. He urged the court to grant his prayers.
12. The defendant though served did not offer any evidence in defence. The court directed written submissions to be filed.
13. The court directed the parties to file their written submissions which they have complied.

### **Plaintiff's Submissions**

14. The plaintiff in its submissions reiterated the contents of its plaint on the orders sought, the testimony by its witness, the documents it had filed in court, the testimony by the defendants' witness and the documents that was filed on its behalf. The plaintiff thereafter went on to submit that the lorry was recovered and found to be in possession of the police, and that the police had commenced disciplinary proceedings, against their own. That therefore the defence and the witness statement of the defendants ought to be disregarded or dismissed as a sham. The plaintiff urged the court to find that it had proved its case and deserves the reliefs sought.

### **Defendants' Submissions**

15. The defendants in their submissions identified two issues for determination namely; whether the police action to release the lorries was unlawful and unreasonable and whether the plaintiff was entitled to the reliefs sought.
16. On the first issue, it was submitted on behalf of the defendants that it was up to the plaintiff to prove that the action by the police to release the motor vehicle did not follow the correct procedure nor did the respondents have reasonable grounds to exercise the action within their powers. That the action by the police to detain lorry registration number KBH 318W and thereafter release it was justified. They placed reliance on the case of *Disaranio Limited v Kenya National Highways Authority & Attorney General* [2017] eKLR where the court ordered the release of a motor vehicle unlawfully detained.
17. It was submitted further on behalf of the defendant that when it was apparent upon investigation that the detention of the vehicle was not needed, the police shall release it. They placed reliance on section 51 of the Kenya Police Service Act and the case of *Joram Nyaga Mutegi v Kenya National Highway Authority* [2017] eKLR.
18. On the second issue, it was submitted on behalf of the defendants that they should not be punished for exercising statutory functions and hence the plaintiff was not entitled to the relief sought. That section 24 of the *National Police Service Act* provided for the functions of protection of the Kenya Police Service. Further, that section of the *National Police Service Act* further provides for a blanket protection from personal liability.
19. In conclusion, it was submitted on behalf of the defendants that the court should find that plaintiff failed to enjoin the correct party to the present proceedings for conclusive determination of the suit. The court was urged to dismiss the instant suit for lack of proof and merit and the costs be awarded to the defendants.



20. The plaintiff in response to the defendants' submissions filed further submissions where it submitted that it was not in doubt that it was the owner of motor vehicle number KBJ 574J FH215 Mitsubishi lorry. That it was also not in doubt that the police released the motor vehicle to a person other the plaintiff. Further, that the defendants did not tender any evidence to support their defence, hence their submission ought to be dismissed with costs in its favour and it be awarded the orders sought.

### **Analysis and Determination**

21. Upon analyzing the facts of the case, evidence and the submissions tendered by the parties, the one issue arises for determination namely; whether the plaintiff has proved its case on a balance of probabilities as against the defendants.
22. In civil cases, a plaintiff is required to prove his claim against the defendant on the balance of probabilities. This position was clearly stated in the case of Kirugi & Ano. -Vs- Kabiya & 3 Others [1987] KLR 347 wherein the Court of Appeal stated that the burden was always on the plaintiff to prove his case on the balance of probabilities, and that such burden was not lessened even if the case was heard by way of formal proof.
23. Section 107(1) of the *Evidence Act* (Chapter 80 of the Laws of Kenya) provides as follows:
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
24. Additionally, Section 108 of the *Evidence Act* provides as follows:
- “The burden lies on that person who would fail if no evidence at all were given on either side.”
25. There is the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the court to believe in its existence this was held in the case of Isca Adhiambo Okayo vs Kenya Women's Finance Trust KSM CA Civil Appeal No. 19 of 2015 (2016) eKLR. This is found in sections 109 and 112 of the Act as follows:
109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.
26. What is not in dispute is that the lorry indeed belonged to the plaintiff and the same was stolen from its driver. The defendants have not denied the fact that they recovered the said vehicle in kapenguria and later brought it to Naivasha where the matter was reported.
27. There is no rebuttal to the evidence given by the plaintiff that the same was released by the defendants to a third party without his knowledge or authority. Having known that the subject matter was under investigations, what was the hurry to release it to a third party who had not raised any complaint over the same?
28. Indeed, it was within the defendant's ability to hold any precipitate action until the matter was resolved. They had full control of the vehicle having brought it from Kapenguria.



29. At any rate if the defendants were keen to defend the matter then they would have brought in the third party whom they released the vehicle to as he was known to them and not the plaintiff.
30. In the premises this court finds the action by the defendants illegal and totally unilateral and was made without taking the interest of the plaintiff into consideration. More significantly they chose not to rebut what the plaintiff had stated.
31. For the above reasons the plaintiff's claim is hereby allowed.
32. As regards the other prayers the plaintiff did not prove loss of income through cogent evidence. There is no evidence that the said lorry made a profit or brought an income of kshs. 42,000 per day. That prayer is therefore disallowed.
33. The court shall however grant the plaintiff its prayer for the restoration of the said lorry in terms of the known costs which it had already paid for. This is for the simple reason that there was no evidence that the lorry was still in existence as at the time of this suit.
34. In this case there is evidence that the plaintiff had paid to Crater Automobiles (NRB) Limited a sum of kshs. 3,858,000. The plaintiff's exhibits show as much.
35. I find the above amount reasonable and the same shall be paid to the plaintiff by the defendant together with interest from at courts rate from the date of filing of this suit till payment in full.
36. In conclusion judgement is hereby entered against the defendants jointly and severally as hereunder.
  - (a) Payment of kshs. 3,858,000 together with interest from the date of filing of this suit till payment in full.
  - (b) The plaintiff shall have the costs of this suit.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 4<sup>TH</sup> DAY OF JULY, 2023.**

**H. K. CHEMITEI**  
**JUDGE**

