



**Groupe Worth Auto World Kenya Limited v Andiwo & 2 others
(Commercial Appeal E063 of 2020) [2023] KEHC 24556 (KLR)
(Commercial and Tax) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 24556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E063 OF 2020
MN MWANGI, J
SEPTEMBER 22, 2023**

BETWEEN

GROUPE WORTH AUTO WORLD KENYA LIMITED APPELLANT

AND

JOHN MWAI ANDIWO 1ST RESPONDENT

SMP CAPITAL LIMITED 2ND RESPONDENT

LUXURY AUTOMOTIVE LIMITED 3RD RESPONDENT

(Being an Appeal from the ruling of Hon. C.K. Kithinji, Senior Resident Magistrate, delivered on 22nd September, 2020 in Milimani Chief Magistrate's Court Commercial Suit No. E3629 of 2020)

JUDGMENT

1. In the lower Court, the 1st respondent filed a suit against the appellant, the 2nd and 3rd respondents vide a plaint dated 24th July, 2020 seeking special damages in the sum of Kshs.1,674,000/= or in the alternative, possession and title of motor vehicle registration No. xxxx, costs of the suit and interest. The 1st respondent's case was that the appellant was the beneficial owner of motor vehicle registration No. xxxx, whereas the 3rd respondent was a motor vehicle dealer. That on 15th April, 2020 the 1st respondent purchased motor vehicle registration No. xxxx from the 3rd respondent at Kshs.850,000/= but the said vehicle developed mechanical problems within a month of purchase. He returned the said motor vehicle to the 3rd respondent who agreed to replace the said vehicle with motor vehicle registration No. xxxx.



2. It was stated by the 1st respondent that the 3rd respondent offered to sell him motor vehicle registration No. xxxx at Kshs.1,750,000/=. He stated that thereafter, he paid the 3rd respondent Kshs.824,000/= being a top up on the initial amount of Kshs.850,000/=. He further stated that he is yet to pay the balance of Kshs.76,000/= which was agreed to be paid only after the logbook for the said motor vehicle was handed over to him. The 1st respondent averred that in breach of the said contract, the appellant, 2nd and 3rd respondents have through their agents M/S Vision Auctioneers taken possession of the said motor vehicle from him and they have failed and/or refused to refund him the sum of Kshs.1,674,000/= paid as the purchase price for motor vehicle registration No. xxxx.
3. The plaint in the lower Court was filed contemporaneously with a Notice of Motion application dated 24th July, 2020 brought under certificate of urgency by the 1st respondent. He sought an order for a temporary injunction to restrain the appellant, the 2nd and 3rd respondents from advertising, selling and/or transferring motor vehicle registration No. xxxx pending the hearing and determination of the main suit. The 1st respondent also sought an order for a mandatory injunction directing the appellant, the 2nd and 3rd respondents to release the said motor vehicle to him forthwith.
4. In opposition to the said application, the appellant filed a replying affidavit sworn on 9th August, 2020 by Kenneth Kabui Kihunyo, the appellant's director who deposed that the appellant instructed the 3rd respondent to sell the suit motor vehicle in order to pay back the 2nd respondent's loan and recoup its investment. The deponent averred that the 3rd respondent was directed to sell the said motor vehicle for a one-off payment of not less than Kshs.1,600,000/= so that the monies owed to the 2nd respondent would be paid immediately and the suit motor vehicle released to the proposed purchaser upon payment of the full purchase price. He further averred that the 3rd respondent informed him that the proposed purchaser who turned out to be the 1st respondent had paid Kshs.800,000/= as part of the purchase price and it released the motor vehicle to him. It was stated by the appellant that since the 1st respondent had not paid the entire purchase price, he was not deserving of the orders sought in the application dated 24th July, 2020, as he had not acquired any ownership rights.
5. The 2nd respondent filed a replying affidavit in opposition to the application dated 24th July, 2020. The said affidavit was sworn on 11th August, 2020, by Mehul Shah, the 2nd respondent's director. He deposed that on 12th May, 2020, the 2nd respondent granted the appellant an asset finance facility for purchase of the suit motor vehicle but as at 29th June, 2020, the appellant had already defaulted in payment of the monthly instalments hence it served the appellant with a demand notice of even date. The deponent averred that the appellant's loan account continues to accrue interest and other charges and since the appellant has refused to honour its obligation, the 2nd respondent was forced to commence recovery proceedings against it. The 2nd respondent asserted that on 13th July, 2020 it instructed Vision Auctioneers to repossess the suit motor vehicle but the 1st respondent frustrated the process by parking the suit motor vehicle at Kilimani Police Station.
6. The 2nd respondent deposed that the Trial Court delivered a ruling dated 22nd September, 2020 allowing the application dated 24th July, 2020 as prayed.
7. Being dissatisfied with the said decision, the appellant filed a Memorandum of Appeal dated 22nd October, 2020 raising the following grounds of appeal -
 - i. That the Honourable Court erred in law and fact when she held that the 1st respondent was a bonafide purchase of motor vehicle registration No. xxxx whilst the said 1st respondent had not paid the entire purchase price;



- ii. That the Honourable Court erred in law and fact when it failed to acknowledge or appreciate the fact that the 1st respondent had admitted that Kshs. 76,000/= only being part of the purchase price for the motor vehicle was still outstanding;
 - iii. That the Honourable Court erred in law and fact when it failed to appreciate that the 2nd respondent had an interest in the said motor vehicle registration No. xxxx as a secured creditor having financed the appellant to purchase the said motor vehicle;
 - iv. That the Honourable Court erred in law and fact when it failed to appreciate that the motor vehicle registration No. xxxx had been registered in the joint names of the appellant and the 2nd respondent;
 - v. That the Honourable Court erred in law and fact when it directed or ordered that a mandatory injunction be issued against the appellant and the 2nd and 3rd respondents directing them, their servants and/or agents to forthwith release to the appellant the said motor vehicle registration No. xxxx;
 - vi. That the Honourable Court erred in fact and law when she issued a mandatory injunction against the appellant and the 2nd and 3rd respondents which order was not sought in the 1st respondent's plaint dated 24/07/2020;
 - vii. That the Honourable Court erred in fact and law when she issued an injunction against the appellant, the 2nd and 3rd respondents restraining the appellant and the 2nd and 3rd respondents, their agents, employees or representatives from advertising, selling, transferring the said motor vehicle registration No. xxxx pending the hearing and determination of the suit; and
 - viii. That the Honourable Court erred in fact and law when it issued an injunction restraining the appellant, the 2nd and 3rd respondents, their agents, employees or representatives from advertising, selling, transferring the said motor vehicle registration No. xxxx which order was not sought in the 1st respondent's plaint dated 24/07/2020.
8. The appellant's prayer is for the appeal to be allowed with costs, and for the ruling delivered on 22nd September, 2020 to be set aside and the application dated 24th July, 2020 to be dismissed with costs.
 9. The appeal herein was canvassed by way of written submissions. The appellant's submissions were filed on 20th January, 2023 by the law firm of John Mburu & Company Advocates. The 1st respondent's submissions were filed on 8th March, 2023 by the law firm of J.O. Juma & Company Advocates and the 2nd respondent's submissions were filed by the law firm of Orende & Associates Advocates on 26th January, 2023.
 10. Mr. Munyororo, learned Counsel for the appellant submitted that, the 2nd respondent advanced a loan to the appellant to purchase motor vehicle registration No. xxxx, Toyota Crown, and that the appellant and the 2nd respondent were registered as co-owners of the said motor vehicle, with the 2nd respondent retaining the vehicle's original logbook. He further submitted that the 2nd respondent is a secured creditor since the appellant owes it Kshs.800,000/=. It was stated by Counsel that the appellant decided to sell the suit motor vehicle so as to pay off its loan to the 2nd respondent and recoup its investment. That subsequently, the appellant instructed the 3rd respondent to sell the suit motor vehicle for a minimum of Kshs.1,600,000/= payable by cash at once. Counsel contended that the 1st respondent paid only Kshs.800,000/= to the 3rd respondent as part of the purchase price and the 3rd respondent released the suit motor vehicle to him contrary to the appellant's instructions.



11. Counsel for the appellant relied on the case of *Mrao Limited v First American Bank of Kenya Limited & 2 others* [2003] KLR 125 cited by the Court in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR and stated that the 1st respondent did not establish a prima facie case with a probability of success in the application made before the lower Court. He submitted that it is not disputed that the 1st respondent had no relationship or transaction with the appellant and the 2nd respondent. That since the appellant and the 2nd respondent as the registered owners of the suit motor vehicle are not party to the sale and purchase of the suit motor vehicle by the 1st respondent, ownership of the said vehicle cannot pass to the 1st respondent without their express consent and/or authority. Mr. Munyororo observed that if the 1st respondent would have been vigilant by carrying out a search on the suit motor vehicle, he would have seen that the 3rd respondent was incapable of transferring the said vehicle to him without the express consent of the appellant and the 2nd respondent, who are the registered owners of motor vehicle registration No. xxxx.
12. Counsel for the appellant contended that the 3rd respondent acted outside its instructions and authority and that the appellant neither impliedly nor expressly ratified the 3rd respondent's acts, and for the said reason, the 3rd respondent was not the appellant's agent in the transaction it had with the 1st respondent and the principle of *nemo dat quod non habet* falls squarely into place. Mr. Munyororo contended that based on the foregoing, the 1st respondent acquired no better title to the motor vehicle than the 3rd respondent hence he has no clear and unmistakable right to be protected, that is directly threatened by an act sought to be restrained. Mr. Munyororo stated that the 1st respondent indicated that he had not paid the full purchase price of the suit motor vehicle, which means that he is not a bonafide purchaser of motor vehicle registration No. xxxx and cannot therefore be deserving of the equitable orders granted by the Trial Court. To this end, Counsel relied on the case of *Kenya Commercial Finance Company Limited v Afraba Education Society* [2001] 1 E.A. 86 cited in the case of the *Attorney General v Kenya Commercial Bank & 3 others* [2004] eKLR.
13. Mr. Munyororo contended that the 1st respondent would suffer no damage in the absence of an order for injunction as the orders allowing him to maintain possession and use of the suit motor vehicle are detrimental to the appellant and the 2nd respondent as the vehicle will continue to wear and tear at a fast and steady rate thus depreciating in value. He submitted that any damage suffered by the 1st respondent can easily and adequately be compensated by an award of damages since the amount claimed by the 1st respondent is definite. He asserted that the balance of convenience tilts in favour of the appellant and the 2nd respondent.
14. Mr. Orende, learned Counsel for the 2nd respondent submitted that it is not in dispute that it granted the appellant an asset finance facility for the purchase of the suit motor vehicle which was registered in the joint names of the appellant and the 2nd respondent by virtue of the registration under the *Movable Property Security Rights Act*, 2017. He cited Sections 6(5) and 8 of the *Traffic Act* and submitted that the registration certificate vests indefeasible title of the suit motor vehicle on the joint registered owners. Counsel referred to the provisions of clause 6.2.12 of the security agreement which provides that the grantor undertakes to not sell, let, assign or create any encumbrance over or otherwise dispose of the collateral or any one or more of them or any component part thereof and will not remove, change or interfere with any identification.
15. It was stated by Counsel that the 2nd respondent never authorized or consented to the sale of the suit motor vehicle by the appellant, and/or any further dealings or transfer of any interest in the said motor vehicle to any third party. He further stated that since the interest in the suit motor vehicle is jointly registered between the appellant and the 2nd respondent, the 1st respondent cannot purport to have



- acquired the motor vehicle from the 3rd respondent without the 2nd respondent's consent, since the 3rd respondent was not in a position to give a better title than what he had or what the appellant had.
16. Mr. Orende referred to Section 23(1) of the [Sale of Goods Act](#), Cap 31 of the Laws of Kenya and contended that in this case, the 1st respondent was aware that the suit motor vehicle was registered in the joint names of the appellant and the 2nd respondent as exhibited in a copy of the registration certificate for the suit motor vehicle annexed to his affidavit in support of the application dated 24th July, 2020. Based on the foregoing, Counsel submitted that the Trial Court erred in finding that the 1st respondent was a bonafide purchaser of motor vehicle registration number xxxx.
 17. It was stated by Counsel that the appellant was granted an asset finance facility by the 2nd respondent for purchase of the suit motor vehicle and that subsequently, a security agreement and a notice of registration of initial notice was issued pursuant to Regulation 8 of the [Movable Property Security Rights \(General\) Regulations](#), 2017, then the 2nd respondent created a security right over the suit motor vehicle which was registered pursuant to the provisions of the [Movable Property Security Rights Act](#), 2017. He submitted that for the said reason, the 2nd respondent had a perfect and enforceable interest over the motor vehicle registration number xxxx. Mr. Orende cited Section 8 of the [Traffic Act](#), Cap 403 Laws of Kenya and submitted that registration of a person as an owner of a vehicle is *prima facie* proof of ownership and in the absence of evidence to the effect that the 2nd respondent had surrendered its interest in the suit motor vehicle to any other party, the 1st respondent cannot acquire a superior right over it, as the 2nd respondent is one of the registered owners of the said vehicle.
 18. Mr. Baraka, learned Counsel for the 1st respondent cited the provisions of Order 40 Rule 2 of the [Civil Procedure Rules](#), 2010 and the Court of Appeal case of [Nguruman Limited v Jan Bonde Nielsen & 2 others](#) (*supra*) and submitted that a *prima facie* case is not one that must succeed at the hearing of the main case, as all the 1st respondent has to do is to demonstrate that he has an arguable case and that the said burden has been discharged by the 1st respondent. He further submitted that the 1st respondent had demonstrated that he would suffer irreparable injury if an injunction was not issued to preserve the subject matter, pending the hearing and determination of the main suit. The explanation given was that, upon carrying out a search at the Registry of Companies, it was evident that the 3rd respondent does not exist as the only recognized name or entity is Luxury Automotive Dealers Limited. Mr. Baraka expressed the view that the balance of convenience tilts in favour of the 1st respondent.

Analysis and Determination.

19. I have re-examined the Record of Appeal and given due consideration to the written submissions by the Counsel for the parties herein. This being the 1st appellate Court, I have analyzed and re-evaluated the evidence adduced before the lower Court in the interlocutory application, and I am mindful of the fact that I must reach my own independent conclusion based on the said evidence that was adduced by way of depositions. See *Williamsons Diamonds Ltd v Brown* [1970] EA 1 and [Ramji Ratna and Company Limited v Wood Products \(Kenya\) Limited](#), Civil Appeal No. 117 of 2001.
20. The issues that arise for determination in this appeal are –
 - i. Whether the 1st respondent satisfied the conditions to warrant the grant of a temporary injunction by the Trial Court; and
 - ii. Whether the 1st respondent demonstrated special and exceptional circumstances to warrant grant of a mandatory injunction by the said Court.



Whether the 1st respondent satisfied the conditions to warrant the grant of a temporary injunction by the Trial Court.

21. Temporary injunctions to restrain breach of contract or other injury are provided for under the provisions of Order 40 Rule 2 of the Civil Procedure Rules, 2010 which state the following-

“(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.”

22. The principles to be considered before a temporary injunction pending the hearing and determination of a suit were laid down by the Court in *Giella v Cassman Brown and Co. Ltd* [1973] EA 358 as hereunder -

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

23. It is trite that an injunction, being a discretionary remedy is granted on the basis of evidence and sound legal principles. The Court of Appeal in the case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, considered what constitutes a prima case as hereunder -

“So what is a prima facie case” I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

24. In this case, the 1st respondent has demonstrated that he bought the suit motor vehicle from the 3rd respondent for an amount of Kshs.1,750,000/=, and that he has since paid Kshs.1.674,000/= and he is left with a balance of Kshs.76,000/= which was to be paid once the logbook of the motor vehicle registration No. xxxx was handed over to him.

25. The 1st respondent’s case is that the 3rd respondent was acting as an agent of the appellant and that when the 2nd respondent got into an agreement for sale of the suit motor vehicle with the 1st respondent, it had the express authority from them to sell the said vehicle to any interested buyer.



26. The appellant in opposition to the 1st respondent's application for injunction acknowledged that it instructed the 3rd respondent to sell the suit motor vehicle on its behalf in order to pay back the 2nd respondent who had advanced it a loan in terms of an asset finance to purchase the suit motor vehicle. The appellant contended that the 3rd respondent was instructed to sell the said motor vehicle for a one-off payment of not less than Kshs.1,600,000/= so that the monies owed to the 2nd respondent would be paid immediately and thereafter the suit motor vehicle would be released to the proposed purchaser. The appellant averred that the 3rd respondent informed it that the 1st respondent had paid Kshs.800,000/= as part of the purchase price and it released the motor vehicle to him.
27. The appellant submitted that the 3rd respondent acted outside its instructions and authority and the appellant neither impliedly nor expressly ratified the 3rd respondent's act, and as such, the 3rd respondent was not the appellant's agent in the transaction it had with the 1st respondent. The appellant contended that as a result, the 1st respondent acquired no better title to the motor vehicle in issue than the 3rd respondent. In addition, it argued that the 1st respondent admitted that he had not paid the full purchase price of the suit motor vehicle thus he was not a bonafide purchaser of motor vehicle registration No. xxxx.
28. The 2nd respondent on the other hand stated that it granted the appellant an asset finance facility for purchase of the suit motor vehicle on 12th May, 2020 but as at 29th June, 2020, the appellant had already defaulted in payment of its monthly instalments. As a result, it served the appellant with a demand notice of even date but the appellant's loan account continued to accrue interest and other charges since it refused to honour its obligations. It stated that thereafter, it commenced recovery proceedings against the appellant by instructing Vision Auctioneers on 13th July, 2020 to repossess the suit motor vehicle.
29. The 2nd respondent submitted that the log book of the suit motor vehicle is registered in the joint names of the appellant and the 2nd respondent hence in the absence of consent and/or authority from both the appellant and the 2nd respondent, the 3rd respondent had no right to sell the suit motor vehicle to the 1st respondent, since it was not in a position to give a better title than what it had or what the appellant had. The 2nd respondent asserted that since it created a security right over the suit motor vehicle which was registered, it had a perfect and enforceable interest over the motor vehicle registration No. xxxx.
30. From the evidence available before this Court, the 3rd respondent was mandated and/or authorized by the appellant to sell the suit motor vehicle on its behalf and that of the 2nd respondent. The 3rd respondent opted to sell the suit motor vehicle to the 1st respondent who has since paid a substantial amount to the 3rd respondent towards purchase of the said motor vehicle. It was stated by the appellant that it had instructed the 3rd respondent to sell the said vehicle for not less than Kshs.1,600,000/=. The 1st respondent has demonstrated that before he took possession of the suit motor vehicle from the 3rd respondent, he had paid a total sum of Kshs.1,674,000/= to the 3rd respondent. The 1st respondent's affidavit sworn on 24th July, 2020 in the lower Court is explicit that on or about 15th April, 2020, he bought motor vehicle registration No. xxxx from the 3rd respondent for the sum of Kshs.850,000/- but he returned the said motor vehicle to the 3rd respondent a month after purchase, when it broke down. He was then offered motor vehicle registration No. xxxx at the cost of Kshs.1,750,000/- by the 3rd respondent, and that is when he made a top up payment of Kshs.824,000/= to the 3rd respondent. The foregoing therefore means that the vehicle was sold to the 1st respondent as per the appellant's instructions and the 1st respondent believed that he had acquired a good title over motor vehicle registration No. xxxx being a bonafide purchaser for value. It is not discernible from the record that the 1st respondent was privy to the instructions the 3rd respondent had been given by the appellant.



31. This Court takes cognizance of the 2nd respondent's averments that pursuant to the motor vehicle financing agreement it entered into with the appellant, the log book of the suit motor vehicle is registered in the joint names of the appellant and the 2nd respondent, and that it is a secured creditor and it has an enforceable interest over the motor vehicle registration number xxxx. I however concur with the Trial Court's finding at paragraph 16 of its ruling that the 2nd respondent was privy to certain details of the series of transactions between the 1st respondent and the 3rd respondent since it was able to instruct Auctioneers to repossess the vehicle and they knew in whose possession and custody the vehicle was.
32. In the absence of any evidence in rebuttal of the 1st respondent's contention that he has since paid the 3rd respondent KShs.1,674,000/= towards purchase of the suit motor vehicle, this Court finds that the 1st respondent has demonstrated a *prima facie* case against the appellant, the 2nd and 3rd respondents with a probability of success. Further, in the absence of an interlocutory injunction against the appellant, the 2nd and 3rd respondents restraining them from any further dealings with the suit motor vehicle, the 1st respondent stands to suffer irreparable damage, since he stands to lose the motor vehicle which is at a risk of being sold by public auction to a third party as stated by the 2nd respondent. Such action if taken, will render the motor vehicle to be outside the 1st respondent's reach and he stands to lose KShs.1,674,000/= that has already been paid to the 3rd respondent as purchase price for the motor vehicle registration No. xxxx.
33. As was correctly held by the Trial Magistrate, if any loss suffered will be suffered by the appellant, or the 2nd and 3rd respondents, it can be compensated by an award in damages or an order for specific performance. Based on the foregoing, it is my finding that the balance of convenience tilts in favour of upholding the temporary injunction granted by the Trial Court in favour of the 1st respondent.

Whether the 1st respondent demonstrated special and exceptional circumstances to warrant grant of a mandatory injunction by the said Court.

34. It is trite that a mandatory injunction is only granted in special circumstances and in the clearest of cases. In *Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma* [2020] eKLR the Court of Appeal reaffirmed its decision in *Kenya Breweries Limited & another v Washington O. Okeyo* [2002] eKLR where it held that-

“a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”

35. The Trial Court granted the 1st respondent an order of mandatory injunction directing the appellant, the 2nd and 3rd respondents to release motor vehicle registration No. xxxx to the 1st respondent forthwith, pending the hearing and determination of the main suit.
36. It is however worth noting that at the time the Trial Court issued its orders, Vision Auctioneers had received instructions from the 2nd respondent to repossess the suit motor vehicle and sell it by public auction. The 2nd respondent stated that the 1st respondent frustrated the process by parking the said vehicle at Kilimani Police Station where the vehicle has remained ever since. These averments were not disputed by the 1st respondent. This means that as at 22nd September, 2020, when the Trial Magistrate delivered her ruling, the suit motor vehicle was in the custody and/or possession of the 1st respondent and not the appellant, the 2nd and 3rd respondents. As such, there was no need to issue an order for



mandatory injunction directing the appellant, the 2nd and 3rd respondents to release the suit motor vehicle to the 1st respondent.

37. In addition, the 1st respondent did not demonstrate any special circumstances to warrant grant of the said order for mandatory injunction. Based on the foregoing I agree with Counsel for the appellant and the 2nd respondent that the Trial Magistrate erred in granting the 1st respondent an order for mandatory injunction.
38. In the premise, I find that the appeal herein is partly successful and is allowed in the following terms -
- i. The order in the nature of a mandatory injunction issued against the appellant, the 2nd and 3rd respondents directing them, their servants and/or agents to forthwith release to the 1st respondent motor vehicle registration No. xxxx pending the hearing and determination of the main suit issued by the Trial Magistrate in her ruling dated 22nd September, 2020 is hereby set aside;
 - ii. The order granted by the Trial Court for a temporary injunction restraining the appellant, the 2nd and 3rd respondents whether by themselves, their agents, employees or representatives from advertising, selling, transferring the motor vehicle registration No. xxxx pending the hearing and determination of the main suit is hereby upheld; and
 - iii. Noting that the appeal herein is partly successful, each party shall bear its own costs of the appeal.
 - iv. The lower Court case shall proceed expeditiously for hearing of the main case.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF SEPTEMBER, 2023. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Munguti h/b for Mr. Munyororo for the appellant

Ms Yegon h/b for Mr. Orende for the 2nd respondent

Mr. Gakuya James for the 1st respondent

Ms. B. Wokabi – Court Assistant.

