



**NCBA Kenya PLC v Moraa & another (Civil Appeal E036 of 2024)
[2024] KEHC 11713 (KLR) (Civ) (2 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11713 (KLR)

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

CIVIL

CIVIL APPEAL E036 OF 2024

JM NANG'EA, J

OCTOBER 2, 2024

BETWEEN

NCBA KENYA PLC APPELLANT

AND

PERIS MORAA 1ST RESPONDENT

JOGEDAH AUCTIONEERS 2ND RESPONDENT

*(Being and appeal from the ruling of the Chief Magistrate's Court
at Nairobi, Milimani Commercial Courts, dated 13/12/2023
delivered by B.M. Cheloti- PM in CMCC NO. E03596 OF 2023.)*

RULING

Background and Grounds of Appeal

1. This appeal follows the trial court's ruling on two Notice of Motion applications dated 8/8/ 2023 and 17/8/2023 filed by the 1st respondent and a third application dated 25/8/2023 brought by the appellant. By her application dated 8/8/2023 which the 1st respondent filed together with the suit before the lower court, she inter alia sought an order of injunction restraining the appellant and/or its agents whosoever from in any manner howsoever interfering with, auctioning or selling by public auction her motor vehicle registration number KCG 784 G, a 33- seater Passenger Service vehicle, through the 2nd respondent firm of Auctioneers and release of the vehicle to her pending hearing of the application inter-partes and thereafter until the suit was heard and determined. The orders were granted on 15/8/ 2023 pending hearing and determination of the application inter-partes.
2. The 1st respondent's second application dated 17/8/2023 prayed for among other reliefs an order declaring the above vehicle as a running attachment being her only tool of trade and release of the



vehicle to her pending hearing of that application inter-partes. The 1st respondent further sought to have the appellant and the 2nd respondent declared to be in contempt of the lower court's orders issued on 15/8/2023 pending hearing and disposal of the suit before the lower court.

3. The appellant's application dated 25/8/2023 mainly sought stay of execution of the lower court orders issued in the 1st respondent's application dated 17/8/2023 pending hearing and determination of the application; setting aside of the said orders and detention of the vehicle at its yard until further orders of the court.
4. It would appear that no interim orders were issued on the applications dated 17/8/2023 and 25/8/2023. The trial court directed that all the applications would be disposed of together and directed the parties to file written submissions.
5. Upon considering the three applications, the learned trial magistrate noted as follows in a ruling delivered on 13/12/2023: "The applications herein relate to the purchase of motor vehicle registration number KCF 784 G wherein the plaintiff (read, the 1st respondent) secured financing from the 1st defendant (read, the appellant)". The court was of the opinion that the applications raised "triable issues which ought to be determined through trial". The trial magistrate therefore directed that "in a bid to preserve the suit motor vehicle, the plaintiff and defendants are hereby restrained by themselves, employees, servants/agents or any person claiming through them from interfering, auctioning or selling by way of public auction or in any dealing with the suit motor vehicle pending hearing and determination of this suit" (sic). This is the order that provoked this appeal.
6. By Memorandum of Appeal dated 11/1 2024, the appellant craves an order setting aside the trial court's ruling of 13/12/2023 and the costs of the appeal as well as those incurred in the suit before the lower court. The grounds of appeal as contained in the Memorandum of Appeal may be condensed as hereunder:
 - a. That the learned trial magistrate erred in law and fact by denying the appellant the right of being heard contrary to Articles 50 (1) and 159 (2) (a) of *the Constitution* of Kenya , 2010.
 - b. That the learned trial magistrate erred in law and fact by violating the principle of retroactive application of court orders.
 - c. That the learned trial magistrate erred in law and fact in granting orders in the 1st respondent's applications dated 8/8/203 and 17/8/2023 by applying wrong principles of law.
 - d. That the learned trial magistrate erred in law and fact by failing to determine the appellant's application dated 25/8/203 on its merits and pronouncing herself thereon.
 - e. That the learned trial magistrate erred in law and fact by applying wrong principles of law regarding the matter contempt of court.
and
 - f. That the learned trial magistrate erred by rendering the ruling dated 13/12/2023 without factual and legal analysis of applicable principles of law.

Determination

7. It is acknowledged that learned Counsel for the parties filed their written submissions on the applications in question.



8. Having perused the record and Counsel submissions, I concur with the appellant that the learned trial magistrate wrongly neglected to determine the applications on their merits by applying relevant settled principles of law. This court is, however, hesitant to itself determine the applications so as not to deprive the parties of their right of first appeal to this court. Superior courts have also deprecated interlocutory appeals preferring that aggrieved parties await final judgement of the trial court before making a decision whether or not to appeal.
9. Consequently, the file is remitted to the Chief Magistrate Milimani Commercial Courts who will re-allocate the file to a court of competent jurisdiction (other than Honourable B.M Cheloti – PM) for disposal of the applications and the suit. The three applications herein will subsequently be heard and determined within 45 days of the new trial court becoming seized of the matter considering that the subject motor vehicle is in the court’s custody. For avoidance of doubt, the vehicle will remain in the custody of the court pending determination of the applications in issue.
10. It is directed accordingly.

RULING DELIVERED VIRTUALLY THIS 2ND DAY OF OCTOBER 2024 IN THE PRESENCE OF:

The appellant’s advocate,

The 1st respondent’s advocate,

The 2nd respondent,

The Court Assistant,

J. M. NANG’EA, JUDGE.

