



**Muthoni & another v Ibrahim (Civil Appeal E962 of 2023)
[2024] KEHC 14289 (KLR) (Civ) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14289 (KLR)

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

**CIVIL
CIVIL APPEAL E962 OF 2023**

RC RUTTO, J

NOVEMBER 15, 2024

BETWEEN

FAITH MUTHONI 1ST APPELLANT

DANSON MWANIKI 2ND APPELLANT

AND

MOHAMMED NOOR IBRAHIM RESPONDENT

RULING

1. By an application under a certificate of urgency dated 9th May 2024, the Appellants moved the court seeking an order for the unconditional release of Motor Vehicle Registration Number KBV 296A, currently held by Betabase Auctioneers, and for the OCS at the nearest police station to provide security to assist in securing the release of the motor vehicle pending the hearing and determination of the application. The Applicant further sought orders directing Betabase Auctioneers to tax their costs.
2. The application is premised upon the grounds summarized as follows: Pursuant to the orders issued on 26th March 2024, the Applicant deposited the sum of Kshs 600,000/= within 30 days as security for costs. It is in the interest of justice that Betabase Auctioneers release the said motor vehicle as they proceed to tax their costs. Furthermore, the Applicants contend that they are highly prejudiced by the attachment of the motor vehicle, as it serves as their primary source of livelihood.
3. The application was opposed through a Replying Affidavit sworn on 18th June 2024 by the Respondent, who contended that during the court proceedings of 14th May 2024, the Appellant sought the release of the motor vehicle, and the prayers made were similar to those in the present application. The court directed that the motor vehicle be released upon payment of the auctioneer's fees and storage charges.



4. The Respondent further contended that following the court's directions, he, through his advocates, wrote to the auctioneers requesting a copy of the invoice, which was received at his advocate's office on 17th May 2024. On the same day, his advocates forwarded the invoice to the Appellant's advocates. The Respondent asserts that no response has been received regarding the said invoice.
5. On 29th July 2024, directions were issued for the application to be canvassed by way of written submissions. However, at the time of preparing this ruling, no party had filed their respective submissions. Nevertheless, I will proceed to make a determination.
6. To start with, I note that the motor vehicle sought to be released has a different registration number from the one in the court order issued on 14th May 2024. The registration number in the court order is Motor Vehicle Registration KBU 296A while that in the Application is KBV 296 A. In my view, I will take this as a typographical error by the appellant and proceed to exercise my inherent powers and thus for all purpose and intent the motor vehicle being referred to in this ruling is KBU 296A and not KBV 296 A as indicated by the Applicant.
7. This court also notes that this application can be divided into two limbs the first being that this court review, vary or set aside the orders issued on 14th May 2024 by Hon. Lady Justice A. Onger, and secondly that the Auctioneers, Betabase Auctioneers be directed to tax their costs.
8. On the first limb this court notes that the applicant is asking the court to release Motor Vehicle Registration Number KBV 296A pending the hearing and determination of the application. This prayer is untenable since it was a temporary prayer of relief which has been overtaken by events and is of no consequential effect as the application is at the determination stage.
9. Moreover, even if this court were to issue such an order assuming it pertains to the pending appeal, it would effectively be varying an order of a court of concurrent jurisdiction, which this court lacks the jurisdiction to do. See the case of *Stephen Mwaura Njuguna v Douglas Kamau Ngombo* Civil Appeal No. 90 of 2005 (consolidated with Civil Appeal No. 247 of 2007) where the court held that;

“... the learned Judge had no jurisdiction to determine a matter that was decided by a fellow Judge of concurrent jurisdiction. He could not for instance set aside a judgment of Muga Apondi J, a Judge who has the same jurisdiction as himself. Such setting aside could only be by an appellate court but not by a Judge of the High Court as the appellant sought.”
10. Consequently, I cannot vary or set aside the orders issued on 14th May 2024, as they were made by a court of concurrent jurisdiction. Such orders can only be varied or set aside by a superior or appellate court, in this case, the Court of Appeal. Alternatively, the High Court may set them aside, but only where it is demonstrated that improprieties attended their making, which has not been established in this case. Therefore, Order 2 cannot be granted.
11. The second limb is for an order seeking to compel the Applicant is for Betabase Auctioneers to tax their costs. I have perused the court order previously issued by Honourable Lady Justice A. Onger. Order 2 is explicit, it provides; -

“That the Motor Vehicle Registration KBU 296A be released upon payment of Auctioneers charges and storage charges to be agreed on by the parties or taxed by the Deputy Registrar.”
12. Given that the parties have failed to reach an agreement, resulting in the filing of this application, and pursuant to the court order issued on 23rd May 2024, this court directs that Betabase Auctioneers



do proceed to tax their costs in compliance with the said court order within the next 7 days failure of which no further storage charges shall continue to accrue.

13. In conclusion, I therefore make the following orders: -

That Betabase Auctioneers to proceed and tax their costs in compliance with Order 2 of the order issued on 14.5.2024 within the next seven days failure of which no further additional storage charges will continue to accrue if any.

14. Costs shall be in the cause.

Orders accordingly.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF NOVEMBER 2024

For Appellants:

For Respondent:

Court Assistant:

