



**Otieno v Aleki Holdings Limited & another (Civil Appeal E862 of 2022)  
[2024] KEHC 15687 (KLR) (Civ) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15687 (KLR)

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

**CIVIL**

**CIVIL APPEAL E862 OF 2022**

**RC RUTTO, J**

**DECEMBER 6, 2024**

**BETWEEN**

**JACKLYNE ATIENO OTIENO ..... APPELLANT**

**AND**

**ALEKI HOLDINGS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CENTSAVVY CREDIT LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the ruling OF Hon. Rawlings Liluma  
Musiega (MR) (SRM) delivered on the 21st day of October 2022)*

**JUDGMENT**

1. The appellant seeks to overturn the ruling of the trial court in CMCC NO. E733 OF 2022, Nairobi rendered on 21/10/2022. The facts leading to the ruling are that, the appellant filed a notice of motion application dated 19/9/2022 seeking to restrain the respondents from disposing of motor vehicle Registration No. KDC 225F by auction and orders for release of the said motor vehicle to the appellant. The appellant also sought orders compelling the 1<sup>st</sup> respondent to transfer the motor vehicle to her.
2. It was the appellant's case that she entered into a sale agreement with the 1<sup>st</sup> respondent for the purchase of the subject motor vehicle. That she paid Kshs. 1,580,000/= purchase price, Kshs. 68,222/= for the insurance cover and Kshs. 20,000/= for the vehicle tracking device. However, the 1<sup>st</sup> respondent declined to release the original logbook to her and effect the transfer of the motor vehicle despite full payment of the purchase price. Instead, the 2<sup>nd</sup> respondent repossessed the motor vehicle through unknown auctioneers on grounds that there was default in repayment of the loan.
3. Vide a ruling dated 21/10/2022, the trial court allowed the notice of motion application restraining the 1<sup>st</sup> respondent from selling the motor vehicle and ordered the 2<sup>nd</sup> respondent to release the motor



vehicle to the appellant pending the hearing and determination of the suit. The Court further directed the appellant to deposit a security of Kshs. 500,000/= in a joint interest account within 30 days failure to which the orders would lapse.

4. Being dissatisfied with that ruling, the appellant filed the instant appeal on the following summarised grounds, that; - the trial court erred by ordering the appellant to deposit a security of Kshs. 500,000/= in a joint earning account in the names of the advocates within 30 days yet the logbook of the subject motor vehicle was retained by the 2<sup>nd</sup> respondent; the trial court erred in ordering deposit of Kshs. 500,000/= which was excessive, the trial court erred in failing to appreciate that there was sufficient security as the original logbook was in the possession of the 2<sup>nd</sup> respondent, the trial court erred in ordering deposit of security of Kshs. 500,000/= within 30 days which was a short period, the trial court erred in ordering compliance with the orders failure to which they would lapse despite finding that there was need for injunctive orders, the trial court erred in failing to be bound by previous precedents on grant of temporary orders, and that the trial court erred in restricting security to money only.
5. The appellant thus prayed that the order directing her to deposit security of Kshs. 500,000/= in a joint earning account in the names of the advocate be set aside and varied and the respondents be ordered to pay costs of the appeal.
6. The appeal was canvassed by way of written submissions. Notably, the 1<sup>st</sup> respondent did not file any submissions.
7. The appellant submits that orders of the trial court requiring her to deposit a sum of Kshs 500,000/= within 30 days were punitive and the period allowed too short. It was her submission that the actual possession of the original logbook to Motor Vehicle Registration Number KDC 22F was sufficient security to prevent the said motor vehicle being disposed of by the Appellant pending the hearing and determination of the main suit.
8. It was further submitted that only the Respondents could dispose of the subject motor vehicle since they were the registered co-owners as per a copy of the Motor vehicle Registration Certificate dated 16<sup>th</sup> June 2022. The Appellant not being the registered owner was not in a position to transfer or dispose of the subject motor vehicle to any third party thus the 2<sup>nd</sup> Respondent could not allege to be apprehensive at all as to the disposal of the subject motor vehicle by the Appellant.
9. The Appellant submitted that the security at this stage of the proceedings before the trial Court was neither security for costs nor to satisfy any form of decree or security pending appeal. That the security was only needed to prevent the disposition, sale or transfer of the suit motor vehicle which is currently registered in the respondents' name and the original logbook in the possession of the 2<sup>nd</sup> respondent. As such in the prevailing circumstances there was no risk of the said motor vehicle being transferred, disposed or sold by the appellant.
10. The appellant is apprehensive that if the trial Court's orders on security are not set aside she may not be able to deposit the security of Kshs 500,000/= and this shall allow the 2<sup>nd</sup> Respondent, who is still in possession of the subject motor vehicle, to sell the motor vehicle and this will occasion substantial loss and prejudice to the appellant. Reference was made to the case of Kenya Shell Limited vs. Kibiru [1986] KLR 410, with approval in Michael Nhouti Mitheu v Abraham Kivondo Musau (2021) eKLR
11. On the other hand, the 2<sup>nd</sup> respondent set two issues for determination namely: whether the 2<sup>nd</sup> Respondent had the right to retention of title of the subject motor vehicle and whether it honoured the temporary injunction prohibiting the disposal of the motor vehicle.



12. On the first issue it was the 2<sup>nd</sup> Respondent's submission that it was never a party to the contract entered into between the appellant and the 1<sup>st</sup> Respondent and therefore by virtue of the doctrine of privity of Contract it ought not to have been enjoined in the suit.
13. The 2<sup>nd</sup> Respondent submitted that under Section 69 of the *Movable Property Security Rights Act* security right includes the right to retention of title which in the instant case is the log book.
14. That the 2<sup>nd</sup> Respondent took possession of the subject motor vehicle pursuant to the provisions of the law and the orders issued by the Magistrates Court on 27<sup>th</sup> October 2022.
15. It was their submission that the suit motor vehicle was passed on to the 2<sup>nd</sup> Respondent free from any encumbrances thus the appellant did not have any right over the vehicle.
16. The 2<sup>nd</sup> respondent submitted that release of the suit motor vehicle to the appellant was subject to the Appellant depositing Ksh. 500,000 into a joint interest earning account, which she failed to do thus the suit motor vehicle could not be released to her.
17. From the foregoing, the main issue for determination before this Court is whether the trial court erred in directing the appellant to deposit a security of Kshs. 500,000/= in a joint interest earning account with the Advocates as a condition to the injunctive orders and release of the suit motor vehicle to the appellant.
18. The appellant argued that the condition was punitive. That the only security needed was to prevent the disposition or transfer of the suit motor vehicle which was registered in the respondent's names and the 2<sup>nd</sup> respondent had actual possession of the logbook. That this was sufficient security that she could not dispose of the suit motor vehicle.
19. The 2<sup>nd</sup> respondent on its part submitted that it was holding the subject motor vehicle as security for a loan and releasing the same to the appellant was subject to the deposit of Ksh. 500,000 by the Appellant in a joint interest earning account.
20. The 2<sup>nd</sup> respondent did not submit on the issue of whether or not the trial Court erred in directing the appellant to deposit a security of Ksh. 500,000.
21. From the record as at the time the Application was filed, there was prima facie evidence that: the motor vehicle was in possession of the appellant who had paid Ksh. 1,580,000 to the 1<sup>st</sup> Respondent for the purchase of the suit motor vehicle. Further, that the suit motor vehicle and original logbook were in possession of the 2<sup>nd</sup> respondent and the suit motor vehicle was registered in the joint names of the respondents.
22. As correctly submitted by the appellant the security required at this point was to ensure that, pending the hearing and determination of the case, the suit motor vehicle was not disposed of.
23. Therefore, the suit motor vehicle and logbook being in the possession of the 2<sup>nd</sup> respondent and the vehicle registered in the names of the respondents there was no risk of the appellant disposing of the suit motor vehicle to warrant the condition that she deposits Ksh. 500,000 as security.
24. It was indeed punitive for the trial Court to direct the appellant to deposit Ksh. 500,000 as possession of the original title was sufficient security for the 2<sup>nd</sup> Respondent.
25. Accordingly, I find that the trial court indeed erred in subjecting the appellant to deposit Kshs. 500,000/= as security. Consequently, order 3 of the ruling delivered on 21/10/2022 is hereby set aside. Orders 1, 2 and 4 are upheld. Each party to bear its own cost of the appeal.



Orders accordingly

**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS 6<sup>TH</sup> DAY OF DECEMBER 2024**

For Appellant:

For Respondent:

Court Assistant:

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