



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL SUIT NO. 10 OF 2017

MARTIN MAURICE ODHIAMBO.....PLAINTIFF

VERSUS

REAL PEOPLE KENYA LIMITED.....1ST RESPONDENT

INDOMITABLE AUCTIONEERS.....2ND RESPONDENT

BENJAMIN KIPRONO LANGAT.....3RD RESPONDENT

R U L I N G

1. The Application coming for consideration in this ruling is the one dated 2/11/2020 seeking the following orders:-

(i) THAT the Honourable Court certify the application is extremely urgent and do hear the matter EXPARTE at the 1st instance because of urgency and service be dispensed with in the 1st instance.

(ii) THAT Judgment be entered against the 1st Defendant/Respondent as prayed in the amended plaint dated 12/10/2018 for repossessing the Motor Vehicle KBZ 262S after payment of Kshs.3,756,152.86 which is more than two-thirds of the payment obligation of Kshs.4,837,140/= contrary to Section 20 of the consumer protection Act No.46 of 2012 without a Court Order.

(iii) THAT the 2nd Defendant/Respondent did not comply with

Section 21, 23 of the Auctioneers Act and Section 12 (a,

b, f, g) of the Auctioneers Rules 1997.

(iv) THAT the 3rd Defendant/Respondent did not pay the purchase price on 24/5/2018 contrary to the condition of sales.

(v) THAT the repossession of the Motor Vehicle KBZ 265S and sale without a dully registered chattel mortgage and deed of guarantee and indemnity without a Court Order was unlawful therefore null and void.

(vi) THAT the 1st Defendant/Respondent did not take up a credit Life Insurance Police for the Plaintiff/Applicant as per the Loan Agreement.

(vii) THAT any other order or direction the Honourable Court might deem fit to grant.

(viii) Cost of this application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff/Applicant **MARTIN MAURICE ODHIAMBO** in which he has deposed that the 1st and 2nd Respondents repossessed Motor Vehicle Reg. No. KBZ 265S after payment of Kshs.3,756,152.86 which is more than 2/3rds of the payment obligation of Kshs.4,837,140/= Contrary to Section 20 of the Consumer Protection Act No.46 of 2012 without a Court Order.

3. Further, that the 2nd Defendant did not comply with Section 12 (a), (b), (f) and g) of Auctioneers Rules and Section 21, & 23 of the Auctioneers Act.

4. The Plaintiff/Applicant also deposed that the 3rd

Defendant/Respondent was not at the Auction and further he did not pay Kshs.1,000,000/= at the fall of the hammer and he colluded with the 1st and 2nd Defendants to pay the Kshs.1,000,000/= on 26/5/2018.

5. Further, the Plaintiff/Applicant stated in the Supporting Affidavit that the 1st and 2nd Defendants repossessed the Motor Vehicle Reg. No. KBZ 265S without a duly registered chattel mortgage and deed of guarantee and without a Court Order and the 1st Defendant/Respondent did not take up a credit Life Insurance for the Plaintiff/Applicant loan agreement.

6. The 1st Respondent a Replying Affidavit dated 1/12/2020 in which It is deposed that the Application dated 2/11/2020 cannot be granted without a full hearing of this case and further that the 1st Defendant advanced the Plaintiff Kshs.2,580,000/= payable within 36 months for the purchase of the Motor Vehicle Reg. No.KBZ 265S and the Motor Vehicle was registered in the joint names of the Plaintiff and the 1st Defendant.

7. Further that the Plaintiff failed to honour the terms of the agreement and the 1st Defendant repossessed and sold the Motor Vehicle and the proceeds were applied towards settling the loan facility but the same did not clear the entire loan facility.

8. The 1st Defendant urged the Court to dismiss the Application as issues raised are final in nature and they require full hearing.

9. The 3rd Defendant filed grounds of opposition dated 2nd December, 2020 in response to the Plaintiff/Applicants' Application dated 2/11/2020.

10. The Plaintiff/Applicant filed a further Affidavit dated 3/12/2020 in which he retaliated his earlier averments.

11. The parties filed written submissions which I have duly considered. The Plaintiff/Applicant submitted that the 1st Defendant repossessed the Motor Vehicle when the Plaintiff had paid two thirds or more of his payment obligation without leave of the Court.

12. The Plaintiff/Applicant in his submissions essentially repeated his averments in the Supporting Affidavit to his Application dated 2/11/2020.

13. The 2nd and 3rd Defendants in their submissions stated that the Plaintiff/Applicant in his Application is seeking for various orders including entry of summary Judgment without complying with Order 36 Rule 1(a) and (b) of the Civil Procedure Rules.

14. Further that the Applicant is seeking the same prayers he sought in the Plaint which prayers have been challenged by the Defendants.

15. The 1st Defendant's submissions are missing from the record. I have considered the Application dated 2/11/2020 together with the responses hereto and also the submissions filed in the said Application. I find that the Plaintiff wants to dispose of the

hearing of this suit through the said Application.

16. Since the parties were granted leave to file their statements of defence, the parties should file their written statements in order for the suit to proceed to full hearing where all the issues raised in the Application will be ventilated and canvassed.

17. I find that the Application dated 2/11/2020 lacks in merit and the same is accordingly dismissed.

18. The costs of the said Application to abide in the cause.

19. All the parties are directed to file witness statements and the matter be mentioned within 14 days for a hearing date.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH JULY, 2021.

A. N. ONGERI

JUDGE