

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 245 OF 2020

TATA AFRICA HOLDINGS (K) LIMITED...APPELLANT

VERSUS

RISA SIAMPALARESPONDENT

RULING

The lower court delivered a judgment in favour of the respondent in this matter dated 29th May, 2020. The appellant was aggrieved by the said judgment and filed this application dated 2nd July, 2020. The application is by way of Notice of Motion under Order 42 Rule 6 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and Article 159 (2) of the Constitution seeking a stay of execution of the lower court judgment, and in particular a stay of the order for specific performance of motor vehicle registration No. KCH 767T to be transferred by the appellant to the respondent pending the determination of the intended appeal.

The grounds for seeking such an order are set out on the face of the application together with a supporting affidavit signed by the advocate for the applicant. The application is opposed and there is a replying affidavit sworn by the respondent.

Going by the date of the Judgment and the filing of the application, there was not much delay in filing the said application. The applicant has already filed a Memorandum of Appeal dated 24th June, 2020. Parties have also filed their respective submissions which I have noted.

The dispute involved the purchase of a motor vehicle by the respondent from the appellant by way of a verbal agreement. The agreed price was Kshs. 6,000,000/=. The respondent is said to have paid the said sum but the appellant refused to transfer the motor vehicle leading to the suit in the lower court for the transfer of the motor vehicle, punitive damages and costs.

The appellant is supposed to demonstrate substantial loss may occur if this order is not given. The respondent has a judgment in his favour. The appellant on the other hand side has a right of appeal. However, every case depends on its own circumstances.

It is admitted by the appellant that the respondent has made substantial payments towards the purchase of the said motor vehicle. Whereas the respondent submits he has paid the entire sum, the appellant submits there is an outstanding balance of Kshs. 1,350,000/=.

The order sought is discretionary. The respondent has paid a substantial sum yet the appellant retains both the motor vehicle and that substantial sum. In my view, it will be unconscionable to allow the appellant to have the benefit of both. The appellant has also not demonstrated what loss may be incurred if the order is not given, except to state that it is able to furnish security as the court may order.

The respondent has demonstrated that he is a man of means and that he continues to suffer loss as a result of detention of the motor vehicle in dispute. After considering the material presented, I am not persuaded that I should grant the orders sought by the appellant because equity tilts in favour of the respondent. The application dated 2nd July, 2020 is therefore dismissed with costs to the respondent.

Dated and delivered at Nairobi this 15th day of October, 2020.

A.MBOGHOLI MSAGHA

JUDGE