



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 128 OF 2018**

**IN THE MATTER OF REPOSSESSION AND SALE OF THE MOTOR VEHICLE**

**REGISTRATION NO. KBU 276K TOYOTA SALOON AND IN THE MATTER OF THE**

**CHATTERLS TRANSFER ACT, CHAPTER 28 LAWS OF KENYA (REPEALED)**

**AND IN THE MATTER OF THE MOVABLE PROPERTY SECURITY RIGHTS ACT NO. 13 OF 2017**

**BETWEEN**

**MILHAN ACCESS CAPITAL LIMITED.....PLAINTIFF**

**VERSUS**

**DORCAS AYO OLOO.....DEFENDANT**

**JOSEPH KIPKURUI TOWETT.....2<sup>ND</sup> DEFENDANT**

**INSPECTOR GENERAL OF POLICE.....3<sup>RD</sup> DEFENDANT**

**DIRECTIONS**

This suit was instituted by the plaintiff by way of Originating Summons. Alongside the said pleading, there was a Notice of Motion seeking the same substantive orders that appear in the Originating Summons. Subsequently, the parties herein filed their respective affidavits and submissions and the matter listed for judgment today.

On retiring to prepare the judgment, I noted that the issues raised by the parties may not be resolved by way of affidavit evidence alone. Infact, on 27th November, 2018 the court noted that the orders sought in the application will have the effect of determining the entire suit. As a result both counsel agreed oral evidence should be adduced and a hearing date set.

This order appears to have been overshadowed in the process of the many mentions that followed thereafter. Serious questions have been raised relating to the validity of the guarantee by the 2<sup>nd</sup> defendant, the transfer of the motor vehicle the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant, the allegation of forgery which have led to the filing of criminal charges as against the 1<sup>st</sup> defendant and her spouse and coercion alleged by the 2<sup>nd</sup> defendant as against the plaintiff among others.

It is necessary for the averments of the respective parties herein, to be tested and subjected to cross examination, so as to assist the court in determining the real issues in dispute. If I were to proceed on affidavit evidence alone, injustice may follow. Accordingly, the order to deliver judgment is hereby vacated and parties directed to take a hearing date when all witnesses shall be present for the hearing of the suit herein. The costs shall be in the cause.

***Issued and dated this 21<sup>st</sup> Day of November, 2019.***

**A. MBOGHOLI MSAGHA**

**JUDGE**