



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NO. 127 OF 2018

YUSUF MOHAMED OMAR.....APPLICANT

-VERSUS-

TOPLINE TRADERS LIMITED.....1ST RESPONDENT

FAST ENERGY LIMITED.....2ND RESPONDENT

DESMOND MUNYUA KIMANI.....3RD RESPONDENT

RULING

1. The applicant, Yusuf Mohamed Omar is the Objector in Nakuru CMCC No. 299 of 2016.

The 1st and 2nd Respondents are the plaintiff and defendant in the said suit, respectively.

2. The 3rd Respondent **Desmond Munyua Kimani** from the few court papers provided in this application seems to be an interested party as a purchaser of motor vehicle registration No. KBS 367L(Man Prime Mover) subject of the suit CMCC No. 299 of 2016. However, no order or otherwise has been placed before this court showing how the said 3rd Respondent was enjoined in the trial court proceedings, despite its orders in favour of the said 3rd Respondent dated the 31st January 2018, 2nd May 2018 and 16th March 2018 whereof the subject motor vehicle was released to the said 3rd Respondent.

3. Be that as it may, the Applicant in his application dated 10th May 2018, and brought under the provisions of **Order 51 Rule 1, Section 18 and 3A of the Civil Procedure Act** together with **Article 165(6) of the Constitution** seeks orders:

(1) Spend

(2) That this court be pleased to call for and examine the records of Nakuru CMCC No.299 of 2016.

(3) That the Honourable court be pleased to stay any further proceedings and/or implementation of the orders granted on 2nd May 2018 in Nakuru CMCC No.299/16 pending hearing and determination of the instant application.

(4) That the Honourable court be pleased to withdraw Nakuru CMCC NO. 299/16 from the trial court (Hon. B. Mararo, PM) and transfer the same for trial and/or disposal by any other subordinate court to it.

(5) Costs to be in the cause.

4. The grounds for this application are that the trial court has been granting and setting aside orders to the detriment of the applicant, and that the court has granted orders to a stranger in Nakuru CMCC No. 299/2016 and has ignored the applicants application to his detriment and prejudice. It is stated that this court has supervisory jurisdiction over the trial court and therefore well clothed to grant the orders sought.

The application is opposed. I have seen the Replying affidavit as well as grounds of opposition filed on the 21st June 2018.

5. Consideration of the applicant's application reveals that the applicant is not happy with the orders that the trial court has been granting to the respondents, and specifically to the 3rd Respondent whom he terms as a stranger to the proceedings. There has been objection

proceedings by the applicant in respect of the ownership of the subject motor vehicle. I have looked at the trial court orders that seem to have been issued exparte, all granting and setting aside numerous orders in respect of the objection proceedings.

What I am being asked to do by the applicant is to recall the proceedings before the trial court and re-examine them, under the High Court supervisory jurisdiction.

6. **Section 18 of the Civil Procedure Act** empowers the High Court to withdraw and transfer a case instituted in the subordinate court to itself or to any other subordinate court, but upon good and satisfactory reasons – See also **Article 165(6)(7)**. Such good reasons are for purposes of fair administration of Justice to the parties.

7. In my considered view, a matter of granting and vacating court orders is part of court proceedings and within the trial courts powers and discretion.

If a party feels aggrieved by the said orders, there are remedies in terms of interlocutory applications to set aside the exparte orders, review or appeal against the said orders.

It is not for this court to call and examine how and why a trial Magistrate conducts its court business unless properly moved by way of an appeal as doing so would be interfering with its discretion and judicial independence – **Article 160 of the Constitution**.

8. This court has not been told that the trial court is biased or compromised hence the necessity to have the suit transferred to a different magistrate. It is not therefore clear why the suit should not proceed to conclusion before the Magistrate handling the same.

9. If the applicant is dissatisfied with the orders of the trial court as is the case, it behoves him to take action to challenge the same as that is the only way that this court, and with full details as to what has been happening, which is lacking in this application details being very scanty, will be able to critique the trial courts orders and rulings and take necessary steps to rectify the same so as to accord fair administrative and judicial orders to the parties with a view to upholding justice to the parties – **Article 50 of the Constitution**.

10. Accordingly I find no merit in the application dated 10th May 2018. It is dismissed.

The interim orders of stay of proceedings and or implementation of the orders granted by the trial court on the 2nd May 2018 are hereby vacated.

11. Costs of this application shall be in the cause.

Dated, signed and delivered this 12th Day of July 2018.

J.N. MULWA

JUDGE