



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO.E016 OF 2018

LOGITAC GLOBAL LOGISTICS LIMITED.....PLAINTIFF/ RESP

VERSUS

STANBIC BANK KENYA LIMITED.....1ST DEFENDANT/ APPL

RULING

This is a ruling on the Defendant application dated 18th September 2018. It seeks an order to compel the Plaintiff to surrender motor vehicles listed in prayer 3 of the application.

Grounds on the face of the application is the parties executed Hire Purchase Agreement in which the Defendant financed the Plaintiffs 31 vehicles and the bank was to remain the owner of the units and the Plaintiff hirer until the hire purchase instalments are paid in full.

Counsel for the Defendant submitted that as they were waiting for hearing of the application dated 17th May 2018, they carried out investigations and found that the assets had been taken out of the jurisdiction of this Court. He said some were in Tanzania, Uganda, Rwanda and Zambia. He submitted that the intention of the Plaintiff was to ensure that the vehicles were out of the reach of the bank; that the Plaintiff interfered with the tracking devices so that the Defendant could not tell where the vehicles were.

Counsel for the Applicant refuted the allegation that the units are used to make payments but arrears have remained unpaid; that account is in arrears of Kshs. 58,779,953.66 and USD 686,839.83 approximate total arrears is Kshs. 345,230,355.07.

Counsel further submitted that the amount in arrears is too huge yet the units are wearing out and if not protected, the outstanding amount will outstrip the amount to be recovered. He said that the loan has not been serviced for a long time.

Plaintiff's Counsel argued that the Plaintiff failed to deposit 5M as directed by the Court despite using the units. He submitted that where there is hire purchase agreement, the owner has a right at any time to repossess the hired assets. He submitted that it is the duty of the Court to enforce agreement of parties.

Defendant argued that it is irrelevant that the Plaintiff is using the units to generate income. Counsel prayed that the application be allowed in terms of prayer 3; that the units be repossessed and stored at Leakey's storage or any other place the Court may direct.

In response, the Plaintiff filed Replying Affidavit dated 17th October, 2018.

Counsel for the Plaintiff submitted that the Plaintiff came to Court to seek time to pay but there has always been interference from the Defendants, he said that one unit has been sold but no credit given to the Plaintiff.

Counsel submitted that they are asking for 40 days that is up to 26th November 2018 to pay as captured in the letter written to the bank. Counsel confirmed that the units operate across border but due to uncertainties, the business cannot operate well. He added that an excavator was sold at 9.5 million but no documents have been availed by the Defendant.

Counsel for Plaintiff submitted that two parcels of land were given as security and one is worth 130 Million. He argued that it will not serve any purpose to detain the units while interest is rising and that what the Plaintiff need is certainty to operate business and pay the loan.

He further submitted that after status quo orders, the Plaintiff repaired the units in order to commence business. He urged Court to exercise its discretion to enable the business to go on.

In a rejoinder, Counsel for the Plaintiff submitted that the Plaintiff is interested in saving its business but has no interest of the bank. He stated that the units are for the bank and it is exercising its right under the contract of the parties.

I have considered arguments by parties herein. I have also perused documents annexed to Affidavits filed.

There is no dispute that the Plaintiff was in arrears at the time this application was argued. The Plaintiff's Counsel indicated that the Plaintiff is making arrangements to pay the amount in arrears and requested for 40 days which was to lase on 26th November 2018. I am writing this ruling on 8th December 2018. If the Plaintiff paid the arrears as promised the Plaintiffs account should have been regularized by now. Since I cannot tell now whether the arrears have been paid. I will proceed to consider whether the Defendant has demonstrated sufficient reasons to repossess the units and detain awaiting hearing of application dated 17th May, 2017

The fear of the Defendant is that the units have been taking out of the Court's jurisdiction, they are wearing out, and they may not be able to satisfy amount in arrears. He further submitted that despite Plaintiff being allowed to operate the arrears have remained unpaid.

From the pleadings, the Plaintiff has made several promises to regularize the arrears abut failed to honor. Both the Plaintiff and Defendant have interests to protect. The Plaintiff want its business to run while the Defendant also wants to ensure that money lend out is repaid.it would therefore be in the interest of justice to protect the interests of both parties.

From the hire purchase agreements attached the facilities were advanced form year 2015 to 2017 which were restructured by the bank at the request of the Plaintiff. It is evident that despite the restructuring of the facilities the Plaintiff defaulted.

From the foregoing, it is evident that the Defendant has indulged the Plaintiff severally. Plaintiff blames the Defendant for interference leading to uncertainty in operations but no sufficient explanation has been given for delay in payments given for delay in payments even after restructuring of the loan.

My view is that the Plaintiff has been given chance to regularize the arrears and may not be deserving another opportunity. However, the question that arises is what purpose will it serve to have the units detained? Detention of the units will not benefit any of the parties herein. . The Plaintiff having committed to pay arrears by 26th November which has passed now, it will be in the interest of justice to allow the units operate if the amount in arrears was paid by 26th November 2018 by the Plaintiff.

If the promise to pay has not been honored by the Plaintiff, I am inclined to allow repossession of the units as prayed.

FINAL ORDERS

1. Prayer 3 of this application is allowed if Plaintiff failed to deposit Kshs. 25,239,047.40 by 26th November, 2018.
2. Costs of this application to be in the cause.

Ruling Delivered, Dated and Signed at Nairobi this 13th day of December, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

Margaret: **COURT ASSISTANT**

Mr. Were: **COUNSEL FOR PLAINTIFF/RESPONDENT**

Mr. Maondo: **COUNSEL FOR DEFENDANT/APPLICANT**