



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ORIGINATING SUMMONS NO. 25 OF 2016
IN THE MATTER OF SHARING MATRIMONIAL PROEPRTY
AND
IN THE MATTER OF MATRIMONIAL PROPERTY ACT 2013
BETWEEN
S KPLAINTIFF
Versus
H K K DEFENDANT
RULING

Impounding of vehicles

[1] This court gave the following direction in respect of the two motor vehicles in dispute:-

“An order of impounding the vehicles is postponed until parties address the court on the best way of preservation of the vehicles herein”.

[2] Pursuant to the above directions, parties attempted negotiations but could not agree on the best way of preserving the vehicles in question, hence, this further ruling.

Vehicle pledged as security despite injunction

[3] During the mention of this case on 15th December 2016, it came to light- and this was confirmed by the Respondent- that he had taken a loan from Equity in the month of December 2016 and placed Motor vehicle KBX [...] as security for loan. I need to remind that on 21st November 2016 I made, inter alia, the following orders:-

(1) An order that inhibition and restriction shall be registered in the landed properties as well as the vehicles namely P/No.[Particulars Withheld] Akaiga Adjudication Section; P/No. [Particulars Withheld], .[Particulars Withheld] and [Particulars Withheld] Antuamburi Adjudication Section; and Motor vehicle registration No. KBX [...] and KAL [...], respectively; [underlining mine for emphasis]

(2) An order of injunction restraining the Respondent from transferring, or selling or

disposing of or in any manner dissipating the properties herein namely P/No. [Particulars Withheld]Akaiga Adjudication Section; P/No. [Particulars Withheld]Antuamburi Adjudication Section; and Motor vehicle registration No KBX [...] and KAL[...]. [underlining mine for emphasis]

The above orders were, however, amended on 15th December 2016 and the error in the registration number of the vehicle KBX 528H was corrected wherein motor vehicle KBX [...] was deleted and replaced with KBX [...]. In effect, there were orders of restriction as well as of injunction against the Respondent from doing anything whatsoever which may dissipate any of the suit properties. Accordingly, the taking of the loan upon security of KBX [...] was in breach of the orders of the court. This is an important consideration in this decision.

[4] I note that the Respondent has the custody and use of both vehicles. But, I agree with Mr Anampiu that impounding these vehicles into a police station or static position would damage the vehicles. What I should recognize, however, is the fact that these vehicles are subject in a matrimonial properties' cause as a matrimonial property and must be preserved until the proceedings are concluded. The best way of doing so is by ordering each party to have the custody and use of one vehicle. The vehicle that stands in the name of the Respondent is KBX [...] and that is the vehicle that I will assign to the Plaintiff to take possession of, use and maintain it as these proceedings continue. Accordingly, the Respondent shall immediately surrender motor vehicle KBX [...] to the Applicant and deposit the log book of that vehicle in court in 7 days of today. The Respondent will take possession of, use and maintain motor vehicle **KAL** [...] while these proceedings are pending. Each party shall file in court a report on the mechanical and electrical condition, and maintenance of the vehicle in their respective possessions and use every four months from today until this suit is concluded. It is so ordered.

Dated, signed and delivered in open court at Meru today 19th January, 2017.

F. GIKONYO

JUDGE

In the presence of:

Carlpeters advocate for defendant

Otieno advocate for Nyagaka advocate for plaintiff

F. GIKONYO

JUDGE