



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 1053 OF 2006**

**TOM MBOYA ODURU .....PLAINTIFF**

**VERSUS**

**KENYA REVENUE AUTHORITY.....DEFENDANT**

**JUDGEMENT**

1. In the Plaint dated 3<sup>rd</sup> October 2006, the Plaintiff sued the Defendant claiming for interalia, judgment in the sum of kshs 20,000/= per day from 21<sup>st</sup> July 2004 until the date of the registration of the vehicle.
2. The Defendant herein denied the allegations by the Plaintiff. It filed a defence dated 9<sup>th</sup> November 2006 wherein it denied the averments in the Plaint and averred that it is the registrar of motor vehicle who is obligated by law to undertake the registration of motor vehicles. It asserted that the plaintiff's application for registration of the motor vehicle did not tally with the records being held by the registrar of motor vehicles. It further stated that investigations had to be carried out to establish how the subject vehicle bore details and particulars of a different motor vehicle and the payments made were not enough after the anomaly was discovered since it called for re- registration. It further alleged that it did not decline to register the motor vehicle but had the discretion after detecting the anomaly to either reject or allow the registration.
3. When the matter came up for hearing, the plaintiff adduced his evidence as PW1, where he testified that on 14<sup>th</sup> January 2004, he purchased motor vehicle registration number KAK 112 T, Isuzu Bus 62 seater at public auction conducted at Nairobi by Chaka Agencies pursuant to warrants of attachment and sale issued by the High Court of Kenya in Mombasa civil suit number 249 of 2001. He asserted that upon acquiring the motor vehicle, the plaintiff submitted the necessary documents to the defendant and applied for registration of the vehicle in his name after making all the statutory payments. He stated that on 21<sup>st</sup> December 2005, he received a letter of apology for delay from the registrar of motor vehicles. He averred that the defendant declined to register the motor vehicle forcing him to file a Judicial Review in Misc Case number. 160 of 2006, where a consent was entered between the parties to register the motor vehicle which was eventually registered on 2<sup>nd</sup> August 2006. He stated that, due to the delay in registration, he lost business earnings of kshs 20,000/= per day from 21<sup>st</sup> July 2004 until date of registration in August 2006 since the motor vehicle was supposed to be used for public transport.
4. The defence called one witness **Stephen Asiachi**, who testified that the motor vehicle KAK 112T was re registered on 2<sup>nd</sup> July 2006 and adopted as number KAV 583 X afterwhich the log book serial number 9530 was issued. He argued that the plaintiff should have used the new number plate to lodge his claim.

On cross examination, he admitted that the registrar of the motor vehicle was under the Kenya Revenue Authority.

5. At the close of the evidence, learned counsels were invited to file and exchange written submissions plus authorities in support of their respective positions. I have considered the same. Each party filed their respective agreed issues. I have consolidated the issues, they are as follows:

- i. Whether the defendant was the proper party to sue in this case;
- ii. How the plaintiff acquired an interest in motor vehicle number KAK 112T;
- iii. Whether the plaintiff met the statutory requirements for registration of the motor vehicle;
- iv. Whether the defendant wrongfully failed to register the motor vehicle in favour of the plaintiff;
- v. Whether the defendant registered the motor vehicle on compulsion of an order in misc no. 160 of 2006;
- vi. Whether the plaintiff is entitled to the remedies sought;
- vii. Who should bear the costs of this suit?
- viii. whether the plaintiff applied for registration or transfer of ownership of the motor vehicle registration number KAK 112 T;
- ix. Whether the plaintiff submitted all the required documents for transfer of ownership/duplicate and or registration for motor vehicle registration number KAK 112T;
- x. Whether the plaintiff verified the details or applied for copy of records of the motor vehicle;
- xi. Whether the statutory payments made by the plaintiff were sufficient;
- xii. Whether the records being held by the defendant for the motor vehicle tally with the records being furnished by the plaintiff;
- xiii. Whether it was the defendant's fault that the motor vehicle has different details;
- xiv. what was the nature of the court order in Nairobi H.C Misc Civil Appeal no. 160 of 2006;
- xv. Whether the defendant is a Registrar of motor vehicles;
- xvi. whether a proper notice to sue was given prior to commencing the suit;
- xvii. whether it was compulsory for the defendant to re-register motor vehicle registration number KAK 112T.

6. Having analysed the issues filed by the parties, I have condensed them into 5 issues.

- a) Whether the defendant was properly sued;
- b) Whether an appropriate notice to sue was issued;
- c) Whether the plaintiff applied for registration and transfer of the motor vehicle and if so, what measures the defendant took upon application by the plaintiff;
- d) Whether the plaintiff satisfied statutory requirements for registration;

e) Whether there was an issue with the record and who should bear liability.

7. The plaintiff submitted that the defendant is a body corporate established under Cap 469 of the Laws of Kenya, which Authority is charge with registration and re- registration of Motor Vehicles as is rightly sued. He denied the claims by the defendant that the number plate and chassis number did not tally and averred that the claims were not raised during the Judicial Review proceedings. He submitted further that he suffered loss of earnings and business due to the omissions of the defendant. He argued that before disposing the motor vehicle, he had put it in business for the months of September, October and November 2006 where he used to earn kshs 20,000/= daily. To corroborate his averments, he adduced a schedule of revenue collected which was marked as exhibit 13.

8. The defendant on the other hand, submitted that registration of the motor vehicle falls under the Traffic Act. It stated that the Traffic Act was amended on 1<sup>st</sup> December 2012, where the previous office of the Registrar of motor vehicles was replaced with the name Authority which means National Transport Authority. It argued that when the motor vehicle KAK 112T was registered, the particulars entered in the records were 3000676 and 121060 as chassis and engine respectively and that motor vehicle registration number KAK 091T was registered with chassis and engine numbers 300075 an 121045 respectively. It stated that those particulars were changed and the Authority was not informed yet procedure requires that it be informed. He averred that it was this change that delayed the Registrar from registering the motor vehicle since he had to investigate and establish why the vehicle had different particulars. It further submitted that the registration number of the motor vehicle upon re-registration was changed to KAV 583X which the plaintiff failed to mention to the court. It asserted that, the plaintiff did not adduce proof of the income of the motor vehicle which should be by way of daily worksheets, book of accounts, evidence of the driver, logbook and registration of the vehicle, bank statements and income tax returns.

9. I have taken into consideration the arguments of the parties and their submissions.

10. I believe that the issue of whether the defendant is the right party to sue is imperative as it determines whether the suit has merit. According to the evidence adduced by the parties, it is not in dispute that before the filing of this suit, the plaintiff had filed a Judicial Review, Miscellaneous Application number 160 of 2006. The court recorded a consent order between the parties then and orders were issued by **Emukule J.** to the effect that the Registrar of Motor vehicles registers motor vehicle registration number KAK 112T in the name of the plaintiff within 30 days and the plaintiff was also ordered to bear charges for re-registration. The plaintiff in the current suit is seeking for damages for the period that the motor vehicle was not in a position to operate due to lack of registration by the Registrar of motor vehicles. The contention at the time the Judicial Review suit was instituted was between the plaintiff and the Registrar of Motor vehicles and not the Kenya Revenue Authority which explains the discontent by the defendant who is adamant that it should not have been made a party to this suit. The plaintiff on the other hand argues that the Registrar of motor vehicles was a department in the defendant's organisation hence rightfully sued.

11. Looking at the court record, I note that the suit commenced on 4<sup>th</sup> October 2006 vide the plaint dated 3<sup>rd</sup> October 2006. It is also public knowledge that indeed the Registrar of Motor vehicles was a department run under the Kenya Revenue Authority. It was actually a department in Kenya Revenue Authority when this suit was filed in 2006. The documents annexed by the parties that are in relation to this case are all issued under the heading Kenya Revenue Authority but under the road transport department. However, in December 2012, the Department was moved from Kenya Revenue Authority (KRA) to National Transport Service Authority herein referred to as NTSA, currently, the registration of motor vehicles falls under the NTSA. This is provided for under section 3(1) of the Traffic Act that states that:

**"The Authority shall be responsible for the registration and licensing of motor vehicles and trailers and for the licensing of drivers, and for the keeping of such records in relation thereto as are required by this Act."**

12. Taking into account, the prayers being sought by the

plaintiff, I am convinced that if this court was to issue orders sought against KRA, then the orders issued will be in vain since the plaintiff will not be able to enforce such orders against the defendant herein. Under section 5 of Kenya Revenue Authority Act, the purview of KRA is quite clear that the Authority is vested with matters in relation to revenue collection while matters of registration of motor vehicles was vested in NTSA.

13. I note further that the defendant has from the commencement of this suit refuted this claim and averred that the right person to be sued is the Registrar of motor vehicles. This is evident from the defence filed by the defendant on 9<sup>th</sup> November 2006. The plaintiff regardless proceeded with the suit despite this averments. Furthermore, as stated earlier, the plaintiff herein obtained orders against the Registrar of motor vehicles in the Judicial Review case, from which this suit emanates from and not against KRA. It is the registrar of motor vehicles that failed to register the motor vehicle and it was the registrar that was compelled to do so.

14. I have looked at section 3(1) of the Traffic Act before it was amended where it provide that "***The minister shall by notice in the gazette appoint a registrar of motor vehicles, who shall be responsible for the registration and licensing of motor vehicles and trailers and for licensing of drivers, and for the keeping of such records in relation thereto as required by this Act.***"

15. It therefore follows, that the registrar should have been the right person to sue for purposes of obtaining the damages sought. NTSA should have been enjoined to shed clarity in this case since it took the mandate of the Registrar of motor vehicles . These two authorities are separate entities that can each be sued.

16. The plaintiff had ample time to amend his pleadings to include the Registrar of motor vehicles but failed to do so. This would have easily helped his course in obtaining the prayers sought.

17. Even if I was to find that the suit against the defendant is valid, the reasons given for the delay were justifiable. It is apparent that the motor vehicle registration number KAK 112T that was acquired by the plaintiff at an auction had issues with the chassis an engine numbers which did not coincide with those in the register. It appears from the arguments advanced by the defendant, that the chassis and engine numbers in the documents presented by the plaintiff to the Registrar of Motor Vehicles, were of a different motor vehicle namely KAK 091T. This change of the chassis an engine numbers must have been the reason why the registrar took his time to register the vehicle since investigations had to be conducted to establish why such an anomaly of different particulars existed. Indeed, under section 6(8) of the Traffic Act, the Registrar had the discretion to register or not to register a motor vehicle. I am convinced that the reasons advanced for his delay in registering the current motor vehicle are convincing.

18. In the end, I find the plaintiff's suit against the defendant to be incompetent since it is directed at the wrong party, consequently the same is ordered struck out. I also find that the plaintiff did not prove his case to the required standard and I hereby dismiss the suit with costs to the defendant.

Dated and delivered in open court this 3<sup>rd</sup> day of March, 2016.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant