



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**MISC. APPL. NO. 330 OF 2009**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**AND**

**THE REGISTRAR OF**

**MOTOR VEHICLES.....RESPONDENT**

**AND**

**GAETANO ENNIO GRASSO .....EXPARTE APPLICANT**

**AND**

**MAUR ABDALLA MAKI .....1<sup>ST</sup> INTERESTED PARTY**

**HYPER CARS LIMITED ..... 2<sup>ND</sup> INTERESTED PARTY**

**SALIM SALIM .....3<sup>RD</sup> INTERESTED PARTY**

**JUDGMENT**

1. By a Notice of Motion dated 19<sup>th</sup> August 2009 the exparte applicant seeks the following reliefs;
  1. *That the applicant be granted an order of Judicial Review by way of certiorari to remove unto this Honourable Court and to quash the decision by the Registrar of Motor Vehicles to change the Registration and ownership of the motor vehicle registration number KAY 082A and purport to transfer the same to SALIM SALIM.*
  2. *That the Applicant be granted an order of judicial review by way of Mandamus to compel the Registrar of Moor vehicle registration number KAY 082A and to enter and record them as presented by the applicant and in accordance with the strict provisions of the Traffic Act, Cap 403 Laws of Kenya.*
  3. *Any other relief as this Honourable Court may deem just and fit to grant.*
  4. *Costs of and incidental to this application.*
  
2. The facts of the case can be distilled from the affidavits filed herein; the verifying affidavit of

Gaetano Ennio Grasso sworn on 5<sup>th</sup> June 2009, the replying affidavit of George Gachohi Chege, the 2<sup>nd</sup> respondent's director, sworn on 28<sup>th</sup> September 2009 and the replying affidavit of Stephen Asiachi, the Senior Assistant Commissioner in Charge of the motor vehicle registry, sworn on 3<sup>rd</sup> October 2012.

3. I have heard the parties and their submissions and two things are clear. First, there are two parties contending that the motor vehicle subject of this suit belongs to them. On one hand is the *ex-parte* applicant who states that he purchased it from a dealer, Hyper Cars Limited, the 2<sup>nd</sup> interested party, who was selling it on behalf of Maur Abdalla Maka. He was issued with a duly executed transfer but not the logbook. He took possession of the vehicle. He later applied for and was issued with a duplicate logbook by the Registrar of Motor Vehicles.
4. On the other hand is the Registrar of Motor Vehicles ("the Registrar") who argues that the vehicle does not belong to the *ex-parte* applicant. Its position is that from the history of the vehicle and its records, it was first registered in the name of Anwar Hassan Ahmed who transferred it to Abdallah Maur Bwanamaka who then transferred it Salim Sheikhan Salim, the current owner. He contends that the history of the motor vehicle and the accompanying documentation is clear and that the *ex-parte* applicant is not entitled to the orders sought.
5. The Registrar is the custodian of vehicle records and members of the public are entitled to rely on them. The *ex-parte* applicant having been issued with a duplicate logbook was entitled to assume that he is the prima facie owner in light of **section 8** of the **Traffic Act (Chapter 403 of the Laws of Kenya)**. If indeed the Registrar found otherwise, he was supposed to inform the *ex-parte* applicant, hear his side of the story and make a decision as to whether or not to rectify the records. That is what the rules of natural justice require.
6. There is no evidence that the *ex-parte* applicant was given an opportunity to present his case before the register entry was changed to his disadvantage and in favour of the 3<sup>rd</sup> interested party. In the circumstances, there being a breach of the rules of natural justice an order of certiorari is granted.
7. I decline to issue an order of mandamus as there appears to be a situation which will require the Registrar to resolve by hearing all parties laying claim to the vehicle. I therefore order as follows;
  1. An order of certiorari be and is hereby issued to remove unto this Honourable Court and to quash the decision by the Registrar of Motor Vehicles to change the Registration and ownership of the motor vehicle registration number KAY 082A and purport to transfer the same to SALIM SALIM.
  2. There shall be no order as to costs

**DATED and DELIVERED at NAIROBI this 4<sup>th</sup> day of October 2013**

**D.S. MAJANJA**

**JUDGE**

Mr Thiga instructed by Akanga Alera and Associates for the *ex-parte* applicant.

Mr Twahir, Advocate instructed by the Kenya Revenue Authority for the respondent.