

**REPUBLIC OF KENYA**

**THE JUDICIARY**

**IN THE CHIEF MAGISTRATE'S COURT AT NAKURU**

**MISCELLANEOUS CIVIL APPLICATION NO. E485 OF 2025**

**IN THE MATTER OF AN APPLICATION FOR ORDERS FOR THE FORCED TRANSFER**

**OF MOTOR VEHICLE REGISTRATION NUMBER KCF 831F**

**AND**

**IN THE MATTER OF THE TRAFFIC ACT (CAP 403 LAWS OF KENYA) AND THE**

**NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT (NO. 33 OF 2012)**

**BETWEEN**

KENYA FLEXOGRAVURE LIMITED..... EX PARTE APPLICANT

**AND**

HEMLATABEN            AMRITLAL            SHAH.....

RESPONDENT

**RULING**

1. Before me is an ex-parte application dated 05/11/2025 brought pursuant to the provisions of section 9 of the Traffic Act, Order 51 of the Civil Procedure Rules and Sections 1A, 1B and 3C of the Civil Procedure Act, in which the ex - parte applicant is seeking a forced transfer of motor vehicle KCF 831F from the Respondent to itself, notwithstanding the absence or unavailability of the Respondent to accept transfer online.
2. The application is based on the 8 grounds on its face and the annexed supporting affidavit of MAHENDRA CHANDULULA PATEL, the applicant's Managing Director. Briefly, the applicant avers that he is the lawful purchaser of the motor vehicle herein through a Sale Agreement dated 27/01/2016 for consideration of Kshs. 1,200,000/-. That following the purchase, it took lawful possession of the motor vehicle and has remained in its continuous use and custody to date. That the respondent has since become unreachable and cannot be traced at her known physical or postal address, rendering the completion of the online transfer process impossible.
3. This application has been brought under a miscellaneous cause. It was served on the NTSA, and not the respondent. Section 9 of the Traffic Act provides as follows:

### ***Change of ownership***

***[1] No motor vehicle or trailer the ownership of which has been transferred by the registered owner shall be used on a road for more than fourteen days after the date of such transfer unless the new owner is registered as the owner thereof.***

***[2] Upon the transfer of ownership of a motor vehicle or trailer, the registered owner thereof shall, within seven days from the date of the transfer, inform the Registrar in the prescribed form of the sale or disposition, name, postal and email addresses and telephone number of the new owner, the mileage recorded on the mileage recorder [if any], of the motor vehicle, and such other particulars as may be prescribed, and shall deliver the registration book in respect of such vehicle to the Registrar together with the transfer fee, whereupon the vehicle shall be registered in the name of the new owner:***

4. In the case of *Muhambi Koja Said v Mbwana Abdi [2015] eKLR*, the Court of Appeal when considering the implication of Section 9 of the Traffic Act stated the following-

***The proviso to Section 9[2] is the second scenario. Unlike the first scenario which is restricted to fourteen days within which the motor vehicle must be registered, the second scenario is where the previous owner has transferred the vehicle to a new owner but has either refused to comply with the requirements necessary to register it, or has died or left Kenya or***

***cannot be traced. Only after the Registrar is satisfied as to any or more of these conditions and upon payment of fees will the new owner be registered. In the meantime before the Registrar is satisfied, although not named in the log book, the new owner, will be for all intents and purposes be deemed to be the owner, and in case of an accident, will be held liable.***  
*(emphasis mine)*

5. I thus do find that whereas the proviso to Section 9(2) of the Traffic Act allow for forced transfer in case the registered owner is dead, has left Kenya, cannot be traced, or has refused to comply, it does not mandate this court with the jurisdiction to issue such an order of a forced transfer. Courts of law do arbitrate on disputes and no disputes has been disclosed herein. In any case, we do not approach courts with a dispute through a miscellaneous cause.
6. Section 9(2) gives the mandate to effect the forced transfer directly to the Authority (NTSA), unless where the court has arbitrated a dispute involving the ownership where a declaratory order would have been issued; or in a sale arising out of a court order such as in auction etc. I thus find that this application is improperly or incompetently before me and do hereby dismiss it in its entirety.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS...11th..... DAY

OF.....December.....,2025

ALOYCE-PETER-NDEGE

**SENIOR PRINCIPAL MAGISTRATE**

*In the presence of;*

**Applicant's counsel: n/a**