

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC. CIVIL APPLN NO. E1166 of 2025

TAUTA OLE LERINKON.....
.....APPLICANT

VERSUS

MOGO AUTO LIMITED.....
.....RESPONDENT

RULING

1. Tauta Ole Lerinkon, (*hereafter the Applicant*) by his **motion dated 1/08/2025** seeks as against Mugo Auto Limited (*hereafter the Respondent*) reliefs inter alia ;
- a. Spent
 - b. *That this Honourable Court do issue interim orders suspending any further repayment obligations under the loan facility agreement dated 31st May 2023, executed between the Applicant and the Respondent, pending the hearing and determination of the Application.*
 - c. *That this Honouable court do issue orders compelling the Respondent to forthwith regularize the said loan facility to reflect the loan amount and monthly installments in Kenya Shillings, in full compliance with*

the directive issued by the competition Authority of Kenya.

- d. That this Honourable Court do further issue orders directing the Respondent to recalculate all payments made under the said agreement in Kenya shillings, rather than United States Dollars, in accordance with the competition Authority of Kenya's directive, and to account for any excess payments made by the Applicant from 31st May, 2023, crediting such amounts towards the Principal and/or refunding the same to the Applicant.*
- e. This Honorable Court do issue such other or further orders as it may deem just and expedite in the interests of justice.*
- f. Costs of the motion.*

2. The motion is predicated upon **Order 40 Rules 1, 2 & 4 of the Civil Procedure Rules (CPR) and Section 1A, 1B and 3A of the Civil Procedure Act**; and supported by the Applicant's affidavit sworn on an even date.

3. The Applicants case is that the Respondent has violated terms of Asset Financing Loan (agreement No. AGS771622 executed between the parties dated 31/05/2023 in which he was advanced Kshs. 480,000/= , whereas it provided for repayment in United States Dollars (**USD**) and whereas the Respondent has been billing the Applicant in Kenya Shillings applying the

prevailing foreign exchange rate, hence has introduced ambiguity and subjected him to unfair and unexplained financial discrepancies unstable conversions and lack of clarity in the billing process.

4. It is further posited that in 24th October 2024 the Competition Authority of Kenya (**CAK**) upon receiving complaints by several complainants including the Applicant, made a finding that the Respondent culpable of deceptive lending practices including false representations and unconscionable conduct by lending them facilities in United States Dollars, disbursed the funds in Kenya Shillings, computed repayments in United States Dollars, exposed the borrowers to continuous and unpredictable foreign exchange fluctuations.
5. Following the above findings, **CAK**, in its decision date 4/10/2024 directed immediate regularization and cessation of the Respondent's exploitative conduct, which the Respondent failed to comply with and continues to levy repayments in USD, thereby inflating the Applicants repayment burden to unstable foreign exchange rates - decision dated 4/10/2024 marked as Ext "10-4"
6. It is upon the above narrative that the Applicant seeks enforcement of the CAK directions in terms of prayers 2, 3 and 4 of the motion. Annexed as Exhibits in support of its averments are marked as "TO-" - Loan agreement' "TO - 2"

loan repayment schedule, Transactions statements “TO-3” and “TO5” being notice to suspend the loan facility debt.

7. In opposition to the motion, the Respondent filed a Replying Affidavit sworn by its legal officer **David Irungu Kimani** on 17/09/2025. The gist of the objection as garnered in the affidavit is primarily that the Applicant’s motion raises weighty and substantive issues that can only be determined in a substantive suit not by way of a miscellaneous application; that the Applicant is bound by the terms of the Assets Financing Agreement dated 31/05/2023, (marked “DIK1,” that it has issued an initial notice to the Applicant in terms of security agreement marked “DIK-2” over its motor Vehicle Registration No. “KCF 924N”; and the loan repayment schedule marked “DIK-4.”

8. Further the Respondent posits that the Applicant accepted terms of the loan agreement, including that the principal, application fee and other charges were to be calculated in USD while repayment were to be made in Kenya Shillings based on prevailing exchange rates, and stated in the general provisions agreement annexed and marked as “DIK-5” and that the Applicant ought not invite the court to rewrite the terms of contract voluntarily entered into by the parties.

9. Additionally, the Respondent states that as at 15/08/2025, the loan outstanding balances were;

- i. Kshs. 441,832/- Principal

- ii. Kshs. 113,024/- Interest
- iii. Kshs. 34,688- accumulated fines and
- iv. Kshs. 589,544 - early repayment amount.

10. On the CAK decision, the Respondent avers that it is not in breach of the decision, stating that CAK directions were confined strictly on the specific accounts that were the subject of proceedings before it; that the Applicant hereto was not a party; and therefore the motion is misconceived, is without basis and ought to be dismissed with costs.
11. Parties were directed to file submissions. Both complied. The court has considered the same alongside the affidavit material provided by the parties.
12. The background to the motion has been stated. In court's considered view, **four issues arise for determination;**
- a) *Whether the decision and directives of the competition authority of Kenya (CAK) is binding to the Respondent.*
 - b) *Whether the application is properly before the court.*
 - c) *Whether the Applicant is deserving of the orders sought.*
 - d) *Who shall bear costs of the application.*

Whether the decision and directives of the competition authority of Kenya (CAK) is binding to the Respondent

13. The Competition Authority of Kenya (CAK) mandate is to enforce the **Competition Act CAP 504**. Its objectives are to enhance the welfare of the people of Kenya by promoting and

protecting effective competition in markets and preventing misleading market conduct throughout Kenya.

14. Additionally, the Authority is mandated to enforce consumer's rights while sanctioning abuse of buyer power whence powerful businesses disenfranchise their weaker suppliers by cushioning parties from misleading representation and unconscionable conduct towards the lesser weaker parties as held in numerous recent superior court's decisions, inter alia; **ASL Limited and Guaranty Trust (GT) Bank Kenya Limited**; delivered on 24/02/2026; and **Twiga stationers Ltd and Printer Limited v. Atlas Axilia Company (private) limited released on 11/02/2026** among others including the decision under review; on complaints against **Mogo Auto Limited dated 4/10/2024**. These decisions are in respect of unconscionable conduct of the Respondent.
15. In respect of the complaint by the Applicant herein (*captured at Par. 3, 8 and 18(ii) of the decision*) and repeated in the Applicant's motion and supporting affidavit, to wit, the loan agreement captures two currencies - KES and USD; that the dollar tabulation was explained as for record keeping; that subsequently Mogo- (the Respondent)- calculated the loan instalment amounts in USD and required the complainant to pay in KES. That a new document duped as General Provisions was introduced that was not availed during the initial negotiations.

16. In the first instance, it is not correct nor true that the Applicant herein was not party to the complaints and decision of CAK dated 4/10/2024. A perusal of Paragraph **8 captured** above **confirms that indeed the Applicant Tauta ole Lerinkon was one of the Complainants** and therefore properly suited having being one of the customers of the Respondent, Mogo Auto Limited.
17. That said, and having stated CAK's mandate under the **Competition Act, CAP 504 Laws of Kenya** and particularly to prevent unfair enrichment by misleading representation and anti-competitive conduct by abuse of dominance and prize fixing, abuse of power by the dominant party and generally by unconscionable conduct.
18. Upon interrogation of the complaints, including the Applicant's CAK at par. 12 of its decision, the Respondent expressed its willingness to enter into an agreement of settlement as provided at **Section 38 of the Act**; as seen at par. 18(ii) first complainant CAK made a finding that the complainant, to wit, **Tauta Ole Lerinkon, to pay to Mugo Auto Limited Kshs. 500,000/= as the final outstanding loan amount, in four equal monthly installments. That was on 4/10/2024.**
19. The Applicant, by this instant motion, prayer 3 seeks an order to compel the Respondent to comply with directives issued by the CAK and on his part to pay the final outstanding loan amount of Kshs. 500,000/= in four equal monthly instalments.

Clearly, had the Applicant complied with CAK's directives, he would not have approached the court for the orders he seeks in this motion.

20. I have read the decision of the CAK. It never directed the Respondent to recalculate all payments made under the said agreement in Kenya shillings; rather, it recalculated the balance itself, and arrived at a decision that the outstanding balance of the loan amount as at date of its decision, stood at Kshs. 500,000/= and gracefully allowed the Applicant to pay in four instalments.
21. Whereas the Applicant puts a lot of weight in CAK's decision, it has failed to comply on its part, while blaming the Respondent for non-compliance. If the Applicant was dissatisfied with CAK's decision, which is not the case here, it had an option to appeal or seek review of the decision. It is clear in my mind that it is the Applicant who is in violation of CAK's directives, not the Respondent.
22. **Section 70(1) of the Competition Act** empowers CAK to issue binding remedies including fines and refunds as well as compliance directives. Such decisions remain valid until otherwise legally set aside either by review orders or upon successful appeal.

- a) Unless lawfully challenged, CAK's orders and indeed all Tribunal decisions are final and enforceable as orders of the court via the laid down channels as reiterated in

Republic v. Public Procurement Administrative Review Board and 2 Others Ex-parte PPARB 92014)eKLR among others.

23. Whereas the Applicant reiterates that CAK directed the Respondent to comply with its directives in terms of its prayers 3 and 4 of the motion, I have not seen such directives, in the decision, save that such appears at its interrogation and analysis of the complaints at par. 12, and thereafter at par. 18, whereupon it rendered its final orders and or directives.
24. To that extent therefore, I agree with the Respondent that the Applicant's motion dated 1/08/2025 is unmerited, lacks merit, and is indeed made with the sole intention to stop it (Respondent) from recovering the outstanding loan from the Applicant. It should be noted that **CAK's decision dated 4/10/2024** is binding on both parties and enforceable on and or by both the Respondent and the Applicant by dint of **Section 70(1) of the Competition Act**, there being no challenge thereof. The above determines the first issue.
- a) Whether the application is properly before the court.***
25. On this issue, it is clear that what is before the court is enforcement proceedings of the decision and directives of CAK by dint of its mandate as stated at the **Competition Act Cap 504, Laws of Kenya**. This is not a substantive suit, rather is a matter of enforcement of reliefs arising from the decision of

CAK, hence the proper manner for bringing enforcement proceedings as opposed to a main suit where substantive reliefs are sought, by way of a Complaint or Petition as provided at **Order 3 Rule 1 Civil Procedure Rules**, and amplified by learned superior court authorities cited by the Respondent **Mwadungudu v. Rashid; Land Registrar Mombasa (2024) eKLR; and Witmore Investment Limited v. County Government of Kirinyaga & 3 Others (2016) eKLR** which are not relevant to the issues here.

26. However, the court agrees fully with the dicta in the decisions that substantive orders that may resolve a matter fully with finality cannot be so issued via miscellaneous applications; such are completely issued upon commencement by way of a complaint, a petition and or an originating summons as provided under **Order 3 Rule 1 of the Civil Procedure Rules**.
27. It is therefore the court's firm and reasoned finding that the matter under review is competently before the court; and such is the determination of issue under review.

b) Whether the Applicant is deserving of the orders sought

28. On interrogation of both parties' affidavit material and relevant statutory imperatives, the court finds no merit in the Application and therefore not deserving of the orders it seeks and against the Respondent, including costs.

a) On the contrary, in my view, it is the Applicant who is aggrieved by CAK's directives. This is so because it has failed to comply with the decision of CAK, forcing the Respondent to initiate execution proceedings towards recovery of the balance of the loan debt; by issuing notices of its intention to recover the balance of the loan balance. I agree with the Respondent that the decision of CAK cannot be applied retrospectively as the Applicant would wish the court to direct.

29. Flowing from the aforestated findings, it is evident that the Applicant by its motion dated 1/8/2025 is not deserving of any of the reliefs sought, as the Motion was unnecessary and not well thought of. It must fail, with attendant costs being borne by the Applicant to the Respondent. It is so ordered.

Delivered Dated and Signed at Nairobi this 30th Day of April 2026.

JANET MULWA.

JUDGE