



**IN THE COURT OF APPEAL**

**IN NAIROBI**

**CORAM: MURGOR J.A. (IN CHAMBERS)**

**CIVIL APPLICATION NO. 124 OF 2014 (UR.102/2014)**

**BETWEEN**

**JOSEPH GICHUKI MUGO.....1ST APPLICANT**

**JOHN MBUGUA NGANG'A.....2ND APPLICANT**

**AND**

**FUJI MOTORS E.A. LIMITED.....1ST RESPONDENT**

**MOHAMED GANI.....2ND RESPONDENT**

**GHALIB KARA.....3RD RESPONDENT**

**SAMIA KAUR.....4TH RESPONDENT**

**DON COLYN.....5TH RESPONDENT**

(Being an application for an injunction pending the hearing and  
determination of the intended appeal from the entire ruling of  
the High Court Milimani Law Courts Commercial & Admiralty

Division of Kamau, J delivered on 23rd January 2014

in

Industrial Court Cause No. 1049 of 2011)

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**RULING**

On the 3rd June 2014, I declined to certify this matter as urgent for reasons that no urgent circumstances had arisen to warrant the issuance of a certificate of urgency.

The matter before me relates to a ruling delivered on 21st May 2014, where the High Court (Kamau, J) declined to order an injunction to restrain the respondents from disposing, alienating, impounding, seizing, repossessing, soliciting or advertising for sale or dealing with motor vehicles registration numbers KBQ 473 X and KBT 931 P (**the Motor Vehicles**) from breaching or terminating the motor vehicle sale agreement entered into with the applicants.

The applicants being aggrieved with the ruling of the High Court filed a Notice of Appeal on 22nd May 2014, and a Notice of Motion on 6th June 2014 together with a supporting affidavit sworn by **Joseph Gichuki Mugo** and **John Mbugua Nganga**, seeking an injunction restraining the respondents from disposing, alienating, impounding, seizing, repossessing, soliciting or advertising for sale or dealing with the Motor Vehicles from breaching or terminating the motor vehicle sale agreement entered into with the applicants, and a temporary injunction restraining the respondents by themselves or their agents and the DCIO Thika, Mr. Okoth, Deputy DCIO Starehe and DCIO Mombasa, from impounding, seizing, repossessing, detaining arresting or in any way interfering with the applicants possession, user, enjoyment with the said motor vehicles pending the appeal. Attached to the Notice of Motion was a Certificate of Urgency dated 6th June 2014 together with a supporting affidavit sworn by **Alex Mbue Ndegwa**. It is this Certificate of Urgency that I declined to certify as urgent.

In the urgency certificate the applicant contended that they had sought injunctive orders which were declined by the High Court in a ruling of 21st May 2014, and that temporary orders were extended for a period of 14 days pending the filing of the application herein. The applicants are apprehensive that the 1st, 3rd and 4th respondents will move to impound, repossess or in any manner deal with or remove the suit motor vehicles out of the reach of the court to the prejudice of the applicants or render the suit in the intended appeal nugatory.

When the application was referred back to me under **rule 55** of this Court's rules for hearing inter partes, **Mr. Ndegwa** learned counsel for the applicants explained that the 2nd and 5th respondents were not a parties to the application in the High Court and as such, this urgency application could proceed without appearance from them. Counsel also did not have any objection to appearing before me, given that **Mr. Abwuor** learned counsel for the 1st, 3rd and 4th respondents had previously been employed in the same firm of advocates. With respect to the Notice of

Motion dated 16th June 2014, counsel submitted that the reason for the urgency was that the applicants had purchased the Motor Vehicles, from the respondents for which they had paid substantial amounts, and carried out significant improvements on them. They sought injunctive orders from the High Court after they were requested to submit the Motor Vehicles to the DCIO Thika. They were granted an ex parte temporary injunction by the High Court prior to the ruling, which orders were extended for a further 14 days after delivery of the ruling to enable them seek injunctive relief from this Court.

**Mr Abwuor** opposed the application, for reasons that the applicants suit was incompetent, as the 2nd and 5th respondents who the applicants had transacted with regarding the Motor Vehicles were not before the Court, as they could not be traced. Counsel explained that the 1st respondent is a limited liability in the business of selling motor vehicles. The Motor Vehicles, the subject of this application, were stolen from the 1st respondent's yard in Thika. The theft was reported to the CID and DCIO in Mombasa and Thika, who requested the applicants to record statements regarding the missing Motor Vehicles. The applicants refused and instead sought injunctive orders to restrain the police from conducting investigations. Counsel submitted that there was no material before the Court to demonstrate that the hearing of the application was urgent, and that all the applicants were being required to do was to assist the police with the investigations regarding the Motor Vehicles.

Having considered the pleadings and the submissions of parties, I am unable to ascertain the nature of the urgency in this application. The applicants say that their apprehension is that the Motor Vehicles that they purchased from the respondents will be impounded by the police, while according to the 1st, 3rd and 4th respondents, they reported to the police that the Motor Vehicles had been stolen, and that the police had only requested the applicants to record statements in respect of the missing Motor vehicles to assist with investigations.

I am unable to establish what has given rise to the urgency in these circumstances that would occasion the need for this Motion to bypass the other pending Motions for stay of execution or for injunctive relief before this Court. The applicants only reason for urgency is that the injunctive relief in the High Court is due to lapse if it has not already done so, which in my view is not sufficient reason to warrant the issuance of a Certificate of Urgency. The applicants have also not shown what steps have since been taken by the 1st 3rd and 4th respondents that would give rise to the apprehension that impounding of the Motor Vehicles is imminent.

For these reasons, I decline to alter my decision made on 3rd June 2014. The costs of this application for urgency to be in the main application.

**DATED and DELIVERED at NAIROBI this 18th day of JULY, 2014.**

**A.K. MURGOR**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**