



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.445 OF 2017

(Before D.K.N.Marete)

PURITY WANJIKU MIGWI.....PLAINTIFF/RESPONDENT

VERSUS

VALENTINE ATENYA MUTOKU.....DEFENDANT

AND

DANIEL NDUATI NG'ANG'A.....OBJECTOR/ APPLICANT

RULING

In this cause, we have two inter related applications dated 15th June, 2021 and 17th June, 2021.

The application dated 15th June, 2021 comes out as follows;

- 1. THAT this Application be certified urgent and service be dispensed with and it be heard ex parte in the first instance due to its urgency.*
- 2. THAT pending hearing and determination of this Application, the Honourable Court be pleased to issue an order restraining the Plaintiff/Respondent by themselves or their agents from attaching and selling by public auction or any other way, disposing or in any way dealing with the Motor Vehicle Registration Number KCB 061L Toyota Hiace.*
- 3. THAT the attachment of the Motor Vehicle Registration Number KCB 061L Toyota Hiace vide the warrants of attachment by the plaintiff/Respondent vide notice of Attachment dated 29th April, 2021 be raised and all consequential actions thereto be set aside.*
- 4. THAT a permanent injunction be and is hereby issued restraining the Plaintiff/Respondent either by themselves or their agents from proclaiming, attaching and or selling by public auction or any other way, disposing or in any way dealing with the Motor Vehicle Registration Number KCB 061L Toyota Hiace listed in the proclamation notice pursuant to warrant of attachment dated 26th August, 2020.*
- 5. THAT the cost of this Application be awarded to the Objector/Applicant.*

It is grounded as follows;

- a) The plaintiff filed a suit against the Defendant, facts to which the Objector does not have any knowledge of.*
- b) The Defendant sold the motor vehicle to the Objector herein on 16th April 2021 upon which the motor vehicle was registered in the Objector's name.*
- c) The judgment in the suit was delivered against the Defendants and a decree issued on 29th April 2021.*
- d) The plaintiff has moved to execute the decree through their agents Vintage Auctioneers who have proclaimed the motor vehicle and threatened to dispose off the same by way of public auction on 17th June, 2021.*

e) The Defendants are not the registered or beneficial owners of the motor vehicle.

f) The decree the plaintiff seeks to execute is against the Defendant and any attachment should be on the property of the Defendants not that belonging to the Objector/Applicant as the Motor Vehicle Registration Number KCB 061L Toyota Hiace.

g) The objector is the registered owner of the Motor Vehicle Registration Number KCB 061 Toyota Hiace and as such has legal and equitable interest in the motor vehicle.

h) The attachment and the intended sale of the motor vehicle will cause tremendous, substantial and irreparable damage and losses to the Objector/Applicant.

i) It is in the interest of justice that this Application be allowed.

The application dated 17th June, 2021 comes out thus;

1. A declaration that the transfer of Motor Vehicle Registration Number KCB 061 L Toyota Hiace by the Respondent to the Objector after its proclamation on the 18th May 2021 is irregular, null and void.

2. THAT the transfer of Motor Vehicle Registration Number KCB 061L Toyota Hiace to the Objector be reversed to the original owner, i.e. the Respondent.

3. THAT the Honourable Court make further orders and issue other directions as it may deem just and expedient.

4. That the costs of the Application be provided for.

It is grounded thus;

a) THAT the motor vehicle Registration Number KCB 061L Toyota Hiace was transferred to the Objector by the Respondent/Judgment Debtor on the 4th day of June, 2021 after the said vehicle had been attached by this Honourable Court.

b) THAT the Claimant/Applicant stands to suffer irreparably unless the irregular transfer is reversed to its original owner so as to ensure that justice is done.

c) THAT it would be in the interest of justice to allow the said application.

d) Further grounds to be adduced at the hearing hereof.

I have had occasion to look at the various cases of the parties in this convoluted dispute. The objector/Applicant in the application dated 15th June, 2021 seeks a lifting of the attachment of motor vehicle Reg.No.KCB 061L, Toyota Hiace and facilitate him to earn a living from his legitimate acquisition. It is his case that a sale of a motor vehicle would occasion tremendous financial loss to him and his family.

The Claimant/Applicant in the application dated 17th June, 2021 submits that the motor vehicle was transferred to the objector by the respondent/ judgment debtor on 4th June, 2021 after it had been attached by this court. It is her prayer that this be undone and the irregular transfer reversed in the interest of justice.

The parties bring out their various cases in their respective replies and submissions to the applications aforesaid.

Overall, the case of the Applicant in the application dated 17th June, 2021 suffices to satiate the interest of justice in the circumstances. The Applicant brings out a case of opaqueness and illegitimacy of the transfer of the motor vehicle to the Objector/Applicant in the application dated 15th June, 2021. The alleged sale and transfer does not come out clean.

Under these circumstances, the 2nd application takes the day. The transfer of the motor vehicle to the objector/applicant in the original application must be revoked to allow the cause of law and due process to take its way.

I am therefore inclined to allow the application dated 17th June, 2021 and on the same wave dismiss the one dated 15th June, 2021. Towards this, I order relief as follows;

i) That the application by the objector/applicant dated 15th June, 2021 be and is hereby dismissed with costs to the Plaintiff/Respondent.

ii) A declaration be and is hereby issued that the transfer of motor vehicle Reg.No.KCB 061L, Toyota Hiace by the Respondent to the Objector after proclamation on 18th May, 2021 is irregular, null and void.

iii) That the transfer of motor vehicle Reg.No.KCB 061L, Toyota Hiace be and is hereby revoked.

iv) That the registration of motor vehicle Reg.No.KCB 061L, Toyota Hiace be and is hereby reversed to its ownership as at 18th May, 2021.

v) That the Registrar of Motor Vehicle be and is hereby ordered to reverse the registration of the motor vehicle in accordance with this determination of court.

vi) That the costs of both applications shall be borne by the Respondent and Objector/Applicant in the application dated 15th June, 2021.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss.Ondieki instructed Norman Otieno & Company Advocates for the Objector\Applicant.
2. Miss Kiongera instructed by Wairimu Kiongera & Company Advocates for the Claimant/Decree holder.
3. Miss Ondieki instructed by Makuno Gachoya & Company Advocates for the Respondent in the Application dated 17th June, 2021.