



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. E144 OF 2021

HARRISON MACHARIA MAINA.....CLAIMANT

VERSUS

LEO DESIGN LIMITED.....RESPONDENT

RULING

1. The Claimant through the notice of motion application dated 15<sup>th</sup> February 2021 seeks an interlocutory injunction directed against the Respondent either by itself, agents, servants, employees and/or any other person working under them from taking repossession, disposing, alienating and/or interfering whatsoever with Motor Vehicle Registration number KCC 470 L Nissan Note model which is lawful possession of the Claimant. The Claimant asserts on the grounds in support of the motion that he was sent on indefinite unpaid leave from 20<sup>th</sup> June 2020 to date and that the period of indefinite leave has led to utter suffering, poverty, psychological torture and harm compelling the Claimant to issue involuntary resignation. The Claimant asserts that upon resignation and based on the legitimate expectation, lawful assignment of the motor vehicle and the Respondent's refusal to pay his terminal benefits he has acquired an equitable lien over the motor vehicle Registration No. KCC 470 L. Nissan Note model and thus the Respondent ought to be estopped from repossessing, disposing or/and alienating the same. The Claimant asserts that he will suffer irreparable loss should the Respondent repossess the motor vehicle aforesaid which has been under his care, maintenance and possession for six (6) years since 2015. In the supporting affidavit, the Claimant/Applicant depones that during the course of his employment in 2015, the Respondent bought and assigned him a motor vehicle Nissan Note model Registration No. KCC 470 L which has been in his continuous possession from 2015 up to date on the understanding and expectation that it would eventually be transferred to him as the owner when he leaves employment on nominal payment. He deponed that by virtue of legitimate expectation and the Respondent's conduct of granting *de facto* ownership to the Claimant of the motor vehicle which vehicle has been in his lawful and continuous possession for 6 years and even after he proceeded on the indefinite unpaid leave since 20<sup>th</sup> June 2020 to date, the Respondent is estopped from repossessing, disposing or interfering with the possession of the said motor vehicle until his final dues and shares are fully processed and paid.

2. The Respondent is opposed to the motion and filed a replying affidavit sworn by Enrico Doclami the General Manager of the Respondent. He averred that the Claimant was and is still an employee of the Respondent. He avers that the application by the Claimant is incompetent, vexatious and a total misrepresentation of facts. He depones that the Respondent had given the Claimant unpaid leave due to the economic hardship the Respondent has faced on account of the Covid-19 pandemic and that the Respondent had intended to recall him as soon as the Respondent's financial situation stabilizes. He confirmed that the Respondent was not aware that the Claimant had resigned from his employment and that the Respondent had not been served with the resignation letter dated 29<sup>th</sup> October 2020 which the Respondent had learnt of through the pleadings filed in this claim. He deponed that the Respondent had also not been served with the demand letter dated 20<sup>th</sup> January 2021 from the applicant's Advocate. He asserts that a casual look at the letter dated 29<sup>th</sup> October 2020 does not indicate that the Claimant actually resigned but was only seeking the payment of certain alleged dues. He deponed that however in view of the affirmation made herein by the Applicant the Respondent was bound to accept the said resignation. He confirmed that the Claimant had been assigned Motor Vehicle KCC 470 L for official use and to facilitate the Applicant's travel to and from work and that the said car is still in the custody of the Applicant. He denied the Applicant's insinuation/allegation that the said vehicle was assigned to the exclusive use of the Applicant with the expectation of the Respondent transferring it to him. He stated that the said vehicle is available for use by any other staff when need arises.

3. The Claimant seeks what is an interlocutory relief. He asserts that he has gained an equitable right to the Motor Vehicle KCC 407 make Nissan Note which he was assigned by the Respondent for use to perform his duties as well as between the house and office. He has been on an indefinite leave brought about by the Covid pandemic. He asserts that the Respondent has not paid him any salary or allowance leaving him destitute and financially crippled to the point he was forced to tender his resignation. The Respondent asserts it never received the said resignation or even the demand letter in respect of the claim but accedes to the request for resignation. It argues that the Claimant is not entitled to the orders he seeks in respect to the vehicle as there was no intention to transfer ownership to the Claimant nor was there exclusive use of the vehicle by the Claimant. The *locus classicus* on injunctions is **Giella v Cassman Brown & Co. Ltd [1973] EA 358** where the Court held:

*“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”*

4. The Claimant herein was bound to show that he has a *prima facie* case with a probability of success. The Respondent has not denied that the Claimant was its employee. Neither has it denied that the Claimant is entitled to pay for the period he was on the indefinite leave. As such, the Claimant has a *prima facie* case with a probability of success. Will he suffer irreparable harm which would not be adequately compensated by an award of damages? I believe the Employment Act by capping compensation at 12 months takes away the Respondent's defence on this ground as the Claimant has been out of a job for one year. The Respondent has not paid any money to the Claimant despite keeping him in its employ. The recompense he can receive for infarctions by the Respondent is capped by law and as such it is in the

interests of justice that the Claimant's claim be secured by granting an interim injunction preserving the motor vehicle KCC 407 N make Nissan Note registered in the name of the Respondent as is. This order of status quo to remain in force till the determination of the suit herein. The suit to be fast tracked in order to bring relief to both the Claimant and the Respondent through expedited hearing. Directions shall issue on the disposal of the suit immediately after the Ruling.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2021.**

**Nzioki wa Makau**

**JUDGE**