



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KISUMU**  
**CAUSE NO. 20 OF 2018**

**(Before Hon. Justice Mathews N. Nduma)**

**JOB MADEDE.....CLAIMANT**

**VERSUS**

**ACACIA VENTURES LIMITED.....RESPONDENT**

**RULING**

1. The objector filed a Notice of Motion application on 25<sup>th</sup> February 2020 seeking an order in the following terms inter alia:
  - a. That this Honourable court be pleased to issue an order directing the plaintiff through themselves and or their lawful agents, Pambo Investment Auctioneers, and or employees, agents and or servants to release the applicant's repossessed motor vehicle Registration No. KBW 974K, Mini Bus Hino, pending the hearing and determination of this application.
  - b. That the Honourable Court do lift the warrants of attachment dated 27<sup>th</sup> January 2020 attaching the Objector's motor vehicle Registration No. KBW 974K, Mini Bus Hino.
  - c. That costs of this application be provided for.
2. The court issued interim orders in terms of prayer 3 of the Application. The application is based on grounds set out on the face of the application, supporting affidavit and the submissions by the objector.
3. The nub of the objection is that the objector who is the registered owner of Motor Vehicle Registration number KBW 974K Mini Bus is not and was not a party to this suit.
4. That the applicant purchased the motor vehicle from the previous registered owners Tsusho Capital Kenya Limited and Patrick Ragot Olang who are also not parties to this suit.
5. That the said motor vehicle was on 27<sup>th</sup> January 2020 upon the instructions by the plaintiff attached by Pambo Investment Auctioneers allegedly in execution of a decree issued by the court on 20<sup>th</sup> December 2018 against the defendant.
6. That the said attachment was not only unlawful but also illegal as the objector herein was not a party and or participated in the suit giving rise to the said decree in respect of which the objector's motor vehicle registration number KBW 974K has been attached in execution.
7. The application be granted with costs.

**Grounds of opposition**

8. The Claimant/Respondent filed grounds of opposition to the application that the application is misconceived and abuse of court process. That the applicant is a stranger to the suit. That application offends the express provision of the Traffic Act (Cap 403) laws of Kenya on the following provisions:
  - i. Definition of owner and plying for hire Section (2)

ii. Section (9)

iii. Section 96 and 97.

9. That the supporting affidavit is defective since applicant is Hassan Orwe Abdullai and the deponent is one Kennedy Odwony Otieno. That the application be dismissed.

### **Determination**

10. The Log book of motor vehicle registration number KBW 974K, Hino the subject of the objection shows the said motor vehicle is registered in the name of Tsusho Capital Kenya and one Patrick Ragot Olang. The motor vehicle copy of records as at 28<sup>th</sup> January 2020, show that the same motor vehicle KBW 974K Hino is currently owned by Hassan Orwe Abdullahi the objector and the previous owner was Gladways Safaris Limited.

11. The objector has demonstrated that the said motor vehicle registration number KBW 974K was attached by Pambo Investments, Auctioneers on 27<sup>th</sup> January 2020 in execution of a decree issued in this case.

12. The claimant/respondent has not demonstrated any connection between the current and previous registered owners of the said motor vehicle KBW 974K, Mini Bus Hino with Acacia Ventures Ltd, the defendant in this suit. It is manifestly clear that the registered owners of the said vehicle never participated in the present suit at all. Section 8 of the Traffic Act, clearly stipulates:

“The person in whose name a vehicle is registered shall, unless the contrary is proved be deemed to be the owner of the vehicle”.

13. The claimant/respondent has not made any attempt at all to justify the attachment by demonstrating that the defendant, Acacia Ventures Ltd is the owner or has any interest in the attached motor vehicle KBW 974K.

14. Consequently, the objection has merit and the same is granted and the following orders issued:

a. The claimant/respondent through themselves and/or their lawful agents, Pambo Investment Auctioneers, and/or employees, agents and or servants to release the objectors repossessed motor vehicle Registration Number KBW 974K, Mini Bus Hino forthwith without any conditions attached.

b. The warrant of attachment dated 27<sup>th</sup> January 2020 attaching the objector’s motor vehicle Registration Number KBW 974K Mini Bus Hino are hereby lifted.

c. The claimant/respondent to pay the costs of the objection/Application.

**Ruling Dated, Signed and delivered at Nairobi this 30<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

### **ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Mathews N. Nduma**

**Judge**

### **Appearances**

Marwa and Company Associates for the Objector.

Wambeyi Makomere and Company Advocates for the Claimant/respondent.

Chrispo – Court Clerk