



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 50 OF 2015**

(Before Hon. Lady Justice Maureen Onyango)

**KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL  
AND INSTITUTIONS WORKERS UNION.....1<sup>ST</sup> CLAIMANT**  
**JELINA MAITHYA.....2<sup>ND</sup> CLAIMANT**  
**CHRISTINE GOLEHO.....3<sup>RD</sup> CLAIMANT**  
**REBECCA BOSIBORI.....4<sup>TH</sup> CLAIMANT**  
**MARTIN ODUOR.....5<sup>TH</sup> CLAIMANT**

**VERSUS**

**JUDITH AKINYI WEYA.....1<sup>ST</sup> RESPONDENT**  
**NATIONAL TRANSPORT AND SAFETY AUTHORITY.... 2<sup>ND</sup> RESPONDENT**  
**REAL TIMES AND MADA MOTORS LIMITED.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

The cause herein was instituted vide the Memorandum of Claim dated 19<sup>th</sup> January 2015, to challenge the alleged fraudulent transfer of motor vehicle registration number KBX 181N to the 1<sup>st</sup> Respondent and her ownership of the motor vehicle. The claim was amended vide the Amended Memorandum of Claim filed on 5<sup>th</sup> July 2018 wherein the Claimants sought the following remedies-

- a. A mandatory order to compel the 1<sup>st</sup> Respondent, and or agents and or servants and or representatives to immediately surrender and return and or restore and or deliver and or release the 1<sup>st</sup> Claimant's motor vehicle registration number KBX 181N to the Claimants.
- b. A mandatory order to compel the 3<sup>rd</sup> Respondent, and or agents and or servants and or representatives to immediately surrender and return and or deliver and or release to the Claimants the original logbook of motor vehicle registration number KBX 181N.
- c. A permanent injunction restraining the Respondents and or their agents and or servants and or representatives from transferring and or alienating and or vandalizing and or wasting or in any manner whatsoever interfering with the 1<sup>st</sup> Claimant's ownership and possession of motor vehicle registration number KBX 181N.
- d. A declaration that motor vehicle registration number KBX 181N belongs to the 1<sup>st</sup> Claimant union as initially registered in the name of the 5<sup>th</sup> Claimant in trust and the transfer and registration of the same in the name of the 1<sup>st</sup> Respondent is *null and void*.
- e. An order for cancellation of logbook number K712572B issued on 13<sup>th</sup> November 2014 and issuance of new logbook in the name of the 1<sup>st</sup> Claimant and or the 5<sup>th</sup> Claimant in trust for the 1<sup>st</sup> Claimant.

f. The deputy registrar of the Employment and Labour Relations Court do sign transfer to give effect to the order above.

g. Damages for loss of user motor vehicle registration number KBX 181N at the rate of Kshs. 10,000.00 per day month (sic) from 11<sup>th</sup> December 2014 until judgment in this cause.

h. Costs in the cause.

i. Interest of the cause at court rates.

j. Any other relief as this court deems fair and just to grant.

### **Claimant's Case**

The 1<sup>st</sup> claimant is a trade union duly registered in Kenya while the 5<sup>th</sup> claimant is its General Secretary and Chief Executive Officer. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> claimants are registered Trustees of the 1<sup>st</sup> claimant as provided under Section 36 of the Labour Relations Act. The Claimants aver that the 5<sup>th</sup> Claimant purchased a motor vehicle registration number KBX 181 N from the 3<sup>rd</sup> Respondent which was registered in his name with the approval of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants' to hold in trust for the 1<sup>st</sup> Claimant.

It is averred that upon transfer, the 3<sup>rd</sup> Claimant issued the 5<sup>th</sup> Claimant with a scanned copy of the logbook and retained the original. While the Claimants' were in the process of recovering the logbook from the 3<sup>rd</sup> Respondent, the 1<sup>st</sup> Respondent took possession of the vehicle. The incident was reported to the Kisumu Central Police Station vide OB 48/11/12/2014 but no action has been taken to date.

On 22<sup>nd</sup> December 2014, the 5<sup>th</sup> Claimant visited the 2<sup>nd</sup> Respondent's offices to follow up on the original logbook but was informed that it was in the 3<sup>rd</sup> Respondent's custody. He was also informed that the 1<sup>st</sup> Respondent had issued the 3<sup>rd</sup> Respondent with a transfer that had been signed in her favour, by him. It is averred that the said transfer is a forgery.

The 5<sup>th</sup> Claimant demanded the issuance of the transfer documents from the 2<sup>nd</sup> Respondent but his efforts proved futile as the 2<sup>nd</sup> Respondent declined. Consequently, the Claimants registered a caveat against the motor vehicle but avers that only a court order can stop the transfer.

The Claimants aver that there is collusion between the police and the 1<sup>st</sup> Respondent to institute criminal proceedings against the 5<sup>th</sup> Claimant to stop him from pursuing the claim for the motor vehicle. This, it is averred, is evidenced by the reluctance of the police to take action against the 1<sup>st</sup> Respondent.

The Claimants aver that since the institution of this suit, the Respondents have fraudulently caused the transfer of the motor vehicle to the 1<sup>st</sup> Respondent and backdated the transfer to 13<sup>th</sup> November 2014.

The Claimants aver that their activities have been halted due the absence of their motor vehicle and the 1<sup>st</sup> Claimant has resorted to hiring another vehicle at a monthly fee of Kshs.10,000.00.

### **1<sup>st</sup> Respondent's Case**

In her response filed on 25<sup>th</sup> March 2019, the 1<sup>st</sup> Respondent avers that the 5<sup>th</sup> Claimant does not have *locus standi* to institute this cause as he does not have authority from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants. It is her position that only the 1<sup>st</sup> Claimant has the *locus standi* as it is a legal entity with the legal capacity to sue and be sued in its own right.

The 1<sup>st</sup> Respondent contends that she is the registered owner of motor vehicle registration number KBX 181N. She avers that clause 23A of the 1<sup>st</sup> Claimant's constitution provides that where a Union purchases and/or owns property, it will be held jointly in trust by the union's three national trustees and not the secretary general.

The 1<sup>st</sup> Respondent contends that the minutes of the meeting that

allegedly took place on 26<sup>th</sup> July 2014 are a forgery as no meeting took place.

She contends that she gave the 5<sup>th</sup> Claimant a sum of Kshs.950,000.00 in cash. Thereafter, they proceeded to Mombasa to purchase the motor vehicle. It is her position that she did not make the payment of the motor vehicle to the 3<sup>rd</sup> Respondent as anticipated, since she had already paid the 5<sup>th</sup> Claimant. It is averred that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents executed the sale agreement dated 2<sup>nd</sup> August 2014 for the sale of the said motor vehicle, in the presence of Fredrick Ouma.

It is the 1<sup>st</sup> Respondent's case that the 3<sup>rd</sup> Respondent had informed her that the 5<sup>th</sup> Claimant had made enquiries regarding the motor vehicle and caused the logbook to be registered in his name. Consequently, she raised this issue with him and it was rectified by causing the motor vehicle to be registered in her name. the 1<sup>st</sup> respondent also avers that it was the 3<sup>rd</sup> Respondent who was informed of the error, and who lawfully rectified it and caused the motor vehicle to be registered in her name. Thereafter, she was presented with the current log book. She asserts that she is a bona fide purchaser of the motor vehicle which has always been in her possession.

The 1<sup>st</sup> Respondent contends that the keys to the motor vehicle were obtained peacefully and denies the allegation of a robbery. She urges this Court to dismiss the claim with costs.

### **3<sup>rd</sup> Respondent's Case**

In its response filed on 7<sup>th</sup> March 2018, the 3<sup>rd</sup> Respondent contends that the 5<sup>th</sup> Claimant and 1<sup>st</sup> Respondent attended its showroom in Mombasa on 2<sup>nd</sup> August 2014 and expressed interest to purchase motor vehicle registration number KBX 181N.

The 3<sup>rd</sup> Respondent avers that they entered into an agreement with both parties but they did not have the money to make the payment. It is averred that the 1<sup>st</sup> Respondent remained behind so as to await completion of the payment. It is contended that the sale agreement was executed by the 1<sup>st</sup> Respondent with the 5<sup>th</sup> Claimant's approval, who had indicated that she was his wife.

Thereafter, payment of the purchase price was made in two instalments of Kshs.600,000.00 and Kshs.350,000.00. The motor vehicle was then released to the 1<sup>st</sup> Respondent and the 5<sup>th</sup> Claimant collected the logbook which was in his name, as instructed by the parties. The 3<sup>rd</sup> Respondent contends that it was not aware that the 1<sup>st</sup> Claimant was the actual purchaser of the vehicle as it only had dealings the 5<sup>th</sup> Claimant and 1<sup>st</sup> Respondent.

It is the 3<sup>rd</sup> Respondent's position that it does not have the power to transfer ownership of the vehicle as it no longer has possession of the same hence the orders of injunction sought against it are non-consequential.

The 2<sup>nd</sup> Respondent did not file a response in the matter. The suit was disposed of by way of written submissions, but only the Claimants filed submissions on 19<sup>th</sup> November 2019. The 1<sup>st</sup> respondent was given time to file by close of day on 16<sup>th</sup> December 2019 but did not.

### **Submissions**

The Claimants submit that they have the *locus standi* to institute this suit to protect the Union's property as provided under Article 22 of the Constitution.

They submit that the 5<sup>th</sup> Claimant is the rightful owner of motor vehicle registration number KBN 181N as the logbook was registered in his name to hold in trust for the 1<sup>st</sup> Claimant. As such, the 3<sup>rd</sup> Respondent had no legal authority to transfer the property to the 1<sup>st</sup> Respondent and only the 2<sup>nd</sup> Respondent has the authority to rectify the registration of the motor vehicles. They submit that the 1<sup>st</sup> Respondent has not adduced any evidence that she paid the purchase price of the motor vehicle.

It is their submission that the 1<sup>st</sup> Respondent has admitted to fraudulently transferring the vehicle to herself in paragraph 30 (ii) of her response of 18<sup>th</sup> March 2019. They aver that the 5<sup>th</sup> Claimant was robbed of the possession of the vehicle which later resurfaced in the 1<sup>st</sup> Respondent's possession.

The Claimants submit that they have proved the 5<sup>th</sup> Claimant's ownership of the motor vehicle hence entitled to the remedies sought. They further submit that they have proved the additional costs incurred in hiring a vehicle for its operations hence should be awarded the damages for loss as claimed.

### **Analysis and Determination**

I have carefully considered the pleadings filed by the parties, their evidence and submissions. The issues of determination are: -

- a. Whether the Claimants have the *locus standi* to institute this suit on behalf of the 1<sup>st</sup> Claimant.
- b. Whether this Court has the jurisdiction over this matter.
- c. Who is the rightful and legal owner of motor vehicle registration number KBX 181N?
- d. Whether the Claimants are entitled to the reliefs sought.

### **Locus Standi**

The 1<sup>st</sup> Respondent avers that the 5<sup>th</sup> Claimant does not have *locus standi* to institute this cause as he does not have authority from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants. Further, that only the 1<sup>st</sup> Claimant has the *locus standi* as it is a legal entity with the legal capacity to sue and be sued in its own right.

On the other hand, the Claimants submitted that the 2<sup>nd</sup> to 5<sup>th</sup> Claimants were the 1<sup>st</sup> Claimant's officials being National Trustees and Secretary General/Chief Executive Officer respectively. This assertion has not been controverted by the Respondents.

The issue of the *locus standi* was not conclusively addressed by the Makau J. in his ruling delivered on 15<sup>th</sup> April 2015 in relation to the

Respondents preliminary objection on jurisdiction which was on grounds that the issues raised were not purely on points of law. As such, the same is for determination by this Court.

There is no legal provision barring union officials or trustees from being enjoined to a claim filed by or against the union. No evidence was adduced by the 1<sup>st</sup> Respondent to controvert the Claimants' assertion that the 2<sup>nd</sup> to 5<sup>th</sup> Claimants were union officials. Further, the 1<sup>st</sup> Claimant is a party to this suit, jointly with the 5<sup>th</sup> claimant. As registered trustees of the 1<sup>st</sup> claimant, the 2<sup>nd</sup> to 4<sup>th</sup> claimants all have *locus standi* to file the instant suit under Sections 37, 47 and 62 of the Labour Relations Act. I thus find no merit in the objections by the 1<sup>st</sup> respondent to the *locus standi* of the 2<sup>nd</sup> to 5<sup>th</sup> claimants to file this suit.

### **Jurisdiction**

Like the issue of *locus standi*, the issue of jurisdiction was not delved into by the Makau J. in his ruling delivered on 15<sup>th</sup> April 2015. It thus falls on this Court to address the same.

Section 12 of the Employment and Labour Relations Court provides for jurisdiction of this court as follows: -

**1. The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—**

- a. disputes relating to or arising out of employment between an employer and an employee;**
- b. disputes between an employer and a trade union;**
- c. disputes between an employers' organisation and a trade union's organisation;**
- d. disputes between trade unions;**
- f. disputes between employer organisations;**
- f. disputes between an employers' organisation and a trade union;**
- g. disputes between a trade union and a member thereof;**
- h. disputes between an employer's organisation or a federation and a member thereof;**
- i. disputes concerning the registration and election of trade union officials; and**
- j. disputes relating to the registration and enforcement of collective agreements.**

Section 47 of the Labour Relations Act provides as follows-

**1. The Industrial Court may—**

- a. order any person who has in his possession or control any property of a trade union, employers' organisation or federation in violation of its rules or who has unlawfully expended or withheld its moneys, to deliver that property or pay that money to its trustees; and**
- b. suspend any official who contravenes paragraph (a).**

**2. A complaint under this section shall be brought by—**

- a. the Registrar; or**
- b. a member of a trade union, employers' organisation or federation at the time of bringing the complaint of the trade union or employers' organisation concerned.**

This court therefore has jurisdiction to hear this matter by virtue of Section 12(1) of the Employment and Labour Relations Court Act and Section 47 of the Labour Relations Act.

### **Ownership of Motor Vehicle KXB 181N**

The 3<sup>rd</sup> respondent's Director KHADIJA MADA made a sworn witness statement in which she states that the vehicle was registered in the name of the 5<sup>th</sup> claimant. The averments of the 1<sup>st</sup> respondent that the 3<sup>rd</sup> respondent

rectified the logbook to bear her name are denied and would legally not be possible after the logbook was issued in the name of the 5th claimant.

The said KHADIJA MADA further confirmed the purchase price was paid in two instalments of Kshs.600,000.00 and Kshs.350,000.00 which corresponds with debits in the 1<sup>st</sup> claimant's bank account as per bank statements. The 1<sup>st</sup> respondent's averments that she gave the 5<sup>th</sup> claimant Kshs.950,000.00 is not corroborated by any evidence. She did not state where the money came from and why such an amount of money would be exchanged in an electric shop in Kisumu in April 2014 if it was intended for purchase of a motor vehicle in Mombasa in August 2014. The whole of the affidavit evidence of the 1<sup>st</sup> respondent and the affidavits deposed by her witness do not explain how the 1<sup>st</sup> claimant paid for the motor vehicle and how the motor vehicle which was first registered in the name of the 5<sup>th</sup> claimant was inexplicably transferred to the 1<sup>st</sup> respondent.

For the foregoing reasons, I find that the true owner of the motor vehicle KXB 181N is the 1<sup>st</sup> claimant having paid for the purchase price of the same and that the 5<sup>th</sup> claimant, as the General Secretary of the 1<sup>st</sup> claimant, was registered as owner of the same in trust for the 1<sup>st</sup> claimant as beneficial owner.

### **Conclusion**

**Having found that the 1<sup>st</sup> claimant is the beneficial owner of motor vehicle registration number KXB 181N and that the 1<sup>st</sup> respondent failed to prove how she came to be registered as owner thereof, I declare the registration of the 1<sup>st</sup> respondent as owner of the motor vehicle registration no. KXB 181N null and void. I direct the 3<sup>rd</sup> respondent to amend the registration particulars thereof to reflect the 1<sup>st</sup> claimant as the owner and issue a fresh logbook in the name of the 1<sup>st</sup> claimant.**

The claimants did not prove the prayer for damages for loss of use. The same is dismissed.

Each party shall bear its costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF MAY 2020**

**MAUREEN ONYANGO**

**JUDGE**

### **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. 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 1B 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.

**MAUREEN ONYANGO**

**JUDGE**