



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO.1296 OF 2017

Before Hon. Lady Justice Hellen S. Wasilwa on 21st February 2018

PETER MWAURA NGANGA.....CLAIMANT/APPLICANT

VERSUS

KENOL KOBIL LIMITED.....RESPONDENT

RULING

1. The Application before Court is the one dated 10th July 2017. The Application was filed by the Applicant herein under Certificate of Urgency and brought through a Notice of Motion filed under Article 40(1) of the Constitution of Kenya, Section (12)(3)(1) of the Employment & Labour Relations Court Act, Rule 17(1), 17(3) and 17(5) of the Employment & Labour Relations Court (Procedure) Rules 2016 and any enabling provisions of the law.

2. The Applicant seeks the following orders:-

1. THAT this application be certified as urgent and be heard ex-parte in the first instance.

2. THAT this Honourable Court be pleased to grant a temporary order of injunction restraining the Respondent whether by itself, its employees, servants or agents from interfering with the Claimants ownership and/or title to motor vehicle registration number KCF 393H, pending the hearing and determination of this Application.

3. THAT this Honourable Court be pleased to grant a temporary order of injunction restraining the Respondent whether by itself, its employees, servants or agents from interfering with the Claimants ownership and/or title to motor vehicle registration number KCF 393H, pending the hearing and determination of this Suit.

4. THAT Costs of the Application be provided for.

3. The Application is supported by the supporting affidavit of the Claimant Applicant herein and on the following grounds:-

1. That the Respondent has illegally, without any colour of justification instructed the National Police Service to obtain motor vehicle registration number KCF 393H from the Claimant.

2. That the Claimant is the legal owner of motor vehicle number KCF 393H having a valid logbook.

3. That it is in the interest of justice that this Honourable Court should declare the Respondent's action to be illegal.

5. In the supporting affidavit, the Applicant has deponed that he was employed by the Respondent in November 2001 as a Purchasing Assistant in the Administration and Human Resource Department. That he served the Respondent willfully and rose through the ranks to the position of Group Finance Manager that was confirmed on 20th September 2016.

6. That during his tenure as an employee of the Respondent, he secured a car loan from the Respondent Company which enabled him to buy motor vehicle registration No. KCF 393H. He exhibited the logbook for the said motor vehicle registration Appendix PMN 1. He also exhibited the motor vehicle search dated 4th July 2017 as Appendix PMN 2 showing he is the legal owner.

7. He avers that on 21st June 2017 he was issued with a letter that summarily dismissed him from employment on account of committing a gross misconduct (PMN 3).
8. That subsequent to the summary dismissal, the Respondent sent him a letter on 28th June 2017 demanding the immediate return of motor vehicle registration No. KCF 393H that was alleged to be company property or else they report it as missing (PMN 4).
9. That before he could respond, he received a message from one Mr. Njuki from Criminal Investigation Department (CID) informing him that he had received a complaint from the Respondent involving motor vehicle KCF 393H, that it had been stolen from the company (PMN 5).
10. He avers that the Respondent acted in bad faith having issued him with a car loan but immediately after dismissal opted to recall the motor vehicle failing to consider the substantial amount of the car loan that he had repaid.
11. The Applicant avers that he had since responded to the CID letter dated 4th July 2017 and proceeded to clear the air with regard to the ownership of this motor vehicle (PMN 6). However, he avers that the police have persistently and incessantly continued to frustrate him insisting that he deliver the motor vehicle to them on the guise that it was stolen from the Respondent.
12. He contends that he was unfairly dismissed from employment by the Respondent and has filed a claim against them. He wants this Court to compel the Respondent to issue him with the original logbook for motor vehicle registration No. KCF 393 H. He refers Court to PMN 7 this Court's judgment in respect of similar cases. He therefore seeks prayers sought in this application.
13. When the Applicants appeared in Court on 10th July 2017, the Court granted orders in terms of prayer 1 and 2.
14. The Respondents opposed this application. They filed their replying affidavit on 28th August 2017. The affidavit was sworn by one Catherine Chege the Respondent's Human Resource Manager.
15. The Respondents admit that the Claimant was their employee and he had various entitlements including a car loan for which on 25th November 2015 he was given a 2.2 million car loan. That it was an express term of the agreement that should the Claimant leave the services of the Respondent before the total sum lent and interest for the time being due thereon has not been repaid in full, then the whole of the balance of the said total sum and interest then outstanding shall forthwith become due and payable by the Claimant (Appendix CC1-1).
16. That it was also a further term of the agreement that should the said sum not be paid, the Claimant shall without prejudice to any other means of recovery be entitled to take possession of the said motor vehicle and to sell it and deduct from the proceeds of sale the amount so outstanding.
17. That the sums were duly remitted to the Claimant who purchased motor vehicle KCF 393H. The Claimant was summarily dismissed by the Respondent on 21st June 2017. That the Claimant defaulted in payment of the interest sum due to the Respondent arising from the car loan agreement and pursuant to Clause 6(b) of the loan agreement, the Respondent exercised its right to repossess the vehicle to recover the sums duly owed to it by the Claimant.
18. That the Applicant has now attempted to conceal the whereabouts of the vehicle and to frustrate the Respondent's recovery of the same owed to it. They aver that the Applicant is guilty of material non-disclosure. They submit that the Application is therefore an abuse of the Court process and improper use of the Court process. The Respondent therefore want this application dismissed as they stand to suffer irreparable damage should the order continue being in force.
19. The Applicant in their further affidavit contend that the Respondent having admitted that they gave him a car loan, the allegations made to the police that he had stolen a company vehicle was in bad faith.
20. He avers that he has not refuted the car loan but that under Clause 3 the loan was to be deducted from his salary over a period of 5 years and any outstanding debts to be recovered from any sums payable i.e. salary, gratuity, compensation or otherwise. He avers that he has never been issued with any accounts to show the outstanding loan or have the Respondents made any demand for the said amount. He contends he was unfairly dismissed and prays the orders sought be granted.
21. I have considered the averments of both parties. The issue of an outstanding loan has not been denied by both parties. The Respondent's interest in the car is to the extent of the loan unpaid and any interest accrued.
22. The Respondent have however not given any account of the outstanding loan and the interest that remains unpaid. There is no indication that they have made any demand for the said payments. It is apparent that the Respondents have been pursuing recovery of the motor vehicle KCF 393H and not the amount of loan outstanding. This is the gist of Clause 6 of loan agreement.
23. In this case, it is my finding that the Respondent's action as treating the nonpayment as theft was in bad faith wherein no demand of payment had been made. I therefore find that the application in Court has merit. I allow it and confirm the interim orders of 10th July 2017 and also allow prayer No. 3 of the Application.

1. THAT, the application be and is hereby certified urgent.

2. THAT temporary order of injunction is hereby granted restraining the Respondent whether by itself, its employees, servants or

agents from interfering with the Claimants ownership and/or title to motor vehicle registration number KCF 393H pending the hearing and determination of this Application.

3. THAT temporary order of injunction is hereby granted restraining the Respondent whether by itself, its employees, servants or agents from interfering with the Claimants ownership and/or title to motor vehicle registration number KCF 393H, pending the hearing and determination of this Suit”.

4. Costs in the cause.

Read in open Court this 21st day of February, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Nyakundi for Respondent – Present

Claimant – Absent