



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 743 OF 2013

JOHN KINYANJUI GATERU CLAIMANT

VERSUS

FAMILY BANK LIMITED RESPONDENT

RULING

Wangari Ndirangu and Co. Advocates for the claimant

Macharia-Mwangi & Njeru, Advocates for the respondent

On 18th January 2013 the respondent filed their application through Notice of motion under Order 8 Rule 5 of the Civil Procedure Rules, section 3 and 12 of the Industrial Court Act and Rule 16 of the Industrial Court Rules seeking for order that they be granted leave to amend the defence to incorporate a counter-claim, the draft defence be deemed as filed and served and pending hearing there be a prohibitory order restraining the claimant from parting with possession or transferring motor vehicle registration KBH 413N. This application is supported by the annexed affidavit of Moses Abudho the respondent Credit officer. The claimant responded to the application through the Replying Affidavit sworn by the claimant dated 23rd December 2013.

The application by the respondent is based on the grounds that the claimant's claim is premised on alleged unfair termination and while in employment with the respondent he had been granted financial facility that was secured by chattel mortgage over motor vehicle KBN 413N registered in the joint names of the claimant and respondent. At the time of termination the facility had not been repaid in full and remains outstanding, the respondent repossessed the vehicle in order to recover the balance and at the hearing of the claim the court directed that the same be released to the claimant pending hearing that was to proceed on 4th February 2014. To protect the respondent interest in the vehicle, it is necessary that they be allowed to amend the defence to include a counter-claim to enable the court make a determination on all the pending issues between the claimant and the respondent. The vehicle forms the only tangible security that the respondent has in relation to the unpaid banking facility granted to the claimant and they are apprehensive that unless the claimant is restrained from parting with possession and ownership pending the hearing, the balance of the facility will not be secured.

The claimant opposed the application by the respondent on the basis that the respondent did not have a right to repossess his motor vehicle registration KBH 513N because at the time of that repossession there was an order against such repossession. The claimant is aware there is an outstanding loan due to the respondent; he was servicing it through a check off system before his termination. That the hearing is underway and to introduce a counter-claim at this point with regard to the vehicle would be illegal and this will involve a change to all the pleadings. The application should therefore be dismissed.

The claim is part-heard to a point the claimant has not concluded his evidence. Before the hearing various applications with regard to the subjection vehicle were pending for hearing and at the point hearing commenced before the parties could agree on this vehicle, this court gave directions as it deemed fair and just in the circumstances of the case. These were the direction of 5th December 2013. This largely related to the vehicle KBH 513N that was introduced through the claimant's application dated 20th August 2013 to protect its repossession by the respondent since he had a facility with them while he was in their employment. This application has not been concluded to date.

In view of the ongoing hearing and the grounds of the application before court, there is good reason for this court to ensure all interests of the parties herein are secured pending the final conclusion of the matters herein. I find the application as filed by the respondent reasonable, filed without delay and only fair and just that the orders sought be granted pending the hearing and judgement herein. I see no prejudice that will be suffered by the claimant as there will be chance to reply to the new issues raised by the respondent. There is a draft amended defence and the claimant canto thus says they have been ambushed and or not aware of the nature of new issues to be introduced by the respondent.

The application dated 18th December 2013 will be granted in the following terms;

- a. **The claimant is hereby restrained by himself or through any other person or entity from parting with the possession of transferring ownership of motor vehicle KBH 513N until the final conclusion of this matter;**
- b. **The respondent is hereby granted leave to file the amended defence within 7 days;**
- c. **The claimant will have a right of reply within 14 days after service;**
- d. **Costs will be in the cause.**

Dated and delivered at Nairobi this 10th February 2014

M. Mbaru

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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