



**Transafrica Mototrs Limited v County Government of Mombasa (Commercial Case 1285 of 2024) [2025] KEHC 3958 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3958 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
COMMERCIAL CASE 1285 OF 2024**

**J NGAAH, J  
MARCH 28, 2025**

**BETWEEN**

**TRANSAFRICA MOTOTRS LIMITED ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... DEFENDANT**

**RULING**

1. By a plaint dated 22 August 2024 and filed in court on even date, the plaintiff has sought for judgment against the defendant for the sum of Kshs. 51,544,965.75 plus interest at court rates. According to the plaint, the amount is said to be the balance of the purchase price of twelve trucks delivered to the defendant by the plaintiff.
2. However, despite the pending suit for recovery of the balance of the purchase price, the plaintiff instructed auctioneers to attach the trucks it delivered to the defendant. To forestall any further precipitate action, the defendant applicant now moves this Honourable Court by way of a motion dated 10 December 2024 seeking the following orders:
  - “ 1. That on the grounds more specifically set out in the certificate of urgency filed herewith, this application be certified urgent and service thereof be dispensed within the first instance.
  2. That pending the hearing and determination of this application inter-par/es, the Honourable Court be pleased to stay execution of the proclamation dated 2<sup>nd</sup> December 2024 and/or any efforts to proclaim by the Plaintiff and the interested party herein.
  3. That the proclamation dated 2<sup>nd</sup> December, 2024 together with all the consequential efforts to proclaim be declared irregular, void and nullity ab initio.



4. That the firm of Khatib & Company Advocates be struck out of this matter. due to conflict of interest.
5. That the costs of this Application be borne by the Plaintiff for an irregular, illegal and improper proclamation thus the need to file this instant Application.”
3. Prayers 1 and 2 are spent and, therefore, besides the prayer for costs, the only other outstanding prayers are prayers 3 and 4.
4. The application is supported by the affidavit of Jimmy Waliula who has introduced himself as the County Attorney of the County Government of Mombasa.
5. According to Waliula, the plaintiff filed suit for recovery of the sum of Kshs. 51,544,965.75. On 19 November 2024, directions were taken over the plaintiff’s motion for summary judgment dated 22 August 2024. On the material date, the defendant’s counsel informed the court that the defendant had filed a notice of preliminary objection dated 19 November 2024. Directions were the issued to the effect that both the notice of motion and the preliminary objection would be heard on 27 February 2025.
6. That notwithstanding, on 4 December 2024, the defendant received an email through the office of the defendant’s County Secretary threatening repossession of the vehicles. Indeed, attached to the email was a proclamation by Jeneby’s Auctioneers. It is the defendant’s position that the proclamation over the vehicles or their repossession by the plaintiff is improper, illegal and irregular since the dispute over payment for the vehicles is pending for determination before this Honourable Court.
7. The purported proclamation, according to Waliula, has not specified the values of the vehicles to be attached. In any event, the County Government is not subject to execution by attachment or such other similar process.
8. It is also alleged that the proprietor of the firm representing the plaintiff is the senator of the County of Mombasa and, in the defendant’s understanding, there is a case for conflict of interest because the proprietor is a member of the senate that oversights County Governments, including the County Government of Mombasa.
9. In response to the application, Mohamed Yusuf filed a replying affidavit in which he has sworn that he is the plaintiff’s general manager. He concedes that the plaintiff instructed Jeneby’s Limited, a firm of auctioneers, to repossess the trucks since the defendant has failed or neglected to pay for them. The vehicles are said to have been delivered way back on 23 October 2019.
10. According to Yusuf, nothing stops the plaintiff from repossessing the trucks when the defendant has not paid for them. In his own words, “there was a total failure of the consideration and the property therefore did not pass to the defendant.”
11. As far as the question of conflict of interest is concerned, Yusuf says that the plaintiff is represented by Miss Fatuma Juma who, as I understand him, has no interest in affairs of the senate with respect to the County Government of Mombasa.
12. The proclamation to which reference has been made in the prayers and a copy of which has been exhibited to the affidavit of Mr. Jimmy Waliula, sworn in support of the application, reads in part:

“7. Warrant of letter of instructions dated 22<sup>nd</sup> November 2024 was given by the above-mentioned creditors and you are hereby notified that the above movable property described in the schedule hereto is hereby duly proclaimed and left



in your custody for 7 (seven) days from the date of this proclamation. At the expiry of 7 (seven) days from the date of this proclamation the same will be removed to the auctioneer's premises and sold by public auction (or in the case of property under hire purchase may be sold by private treaty) unless the amount due together with costs of this proclamation as specified shall in the meantime have been paid."

13. The amount required to be paid are, of course, the amount sought in the suit, advocates costs and auctioneers' charges. The deposition by Yusuf that no consideration at all has been paid by the defendant in settlement of the purchase price for the trucks is inconsistent with the plaintiff's own pleadings in which it has acknowledged receipt of certain sums of money, apparently in part settlement of the debt. In paragraphs 4 and 5 of the plaint, the plaintiff has averred as follows:

- " 4. The Plaintiff delivered the said -twelve (12) trucks on 26<sup>th</sup> March 2018 and proceeded to invoice for the said trucks in the total sum of Ksh. 103,008,000.00.
5. The Defendant thereafter paid the Plaintiff by various instalments as follows; -
- i) 14.05.2018 RTGS 9,482,758.65
  - ii) 14.05.2018 RTGS 11,224,138.00
  - iii) 24.05.2018 RTGS 14,224,138.00
  - iv) 24.05.2018 RTGS 9,482,758.65
  - v) 19.11.2018 RTGS 18,965,517.25
  - vi) 19.02.2019 RTGS 23,706,896.55
  - vii) 11.07.2019 RTGS 5,689,655.15"

14. As earlier noted, the plaintiff is seeking in this suit what is, allegedly, the balance of the purchase price.

15. Against the forgoing background, the action taken by the plaintiff to proclaim and attach the defendant's vehicles is not supported by any law. Section 21 (4) of the *Government Proceedings Act*, cap. 40 is clear that the Government which, under subsection (5) includes County Governments, is not subject to execution or attachment in enforcement of decrees or orders. These provisions read as follows:

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.



16. But even if such processes were available, it would be premature for the plaintiff to purport to set them in motion because the suit in which it seeks recovery of its money has not even been set down for hearing.
17. It cannot also be assumed that the plaintiff is repossessing the trucks in enforcement of its right under a contract because there is no evidence of such a contract or, at least, evidence to the effect that the plaintiff was entitled to repossess the vehicle in default of payment of the full purchase price. And if such an agreement existed, then this suit would be superfluous because the plaintiff cannot purport to be seeking recovery of the balance of the purchase price through this suit and, at the same time, seek to repossess the vehicles whose purchase price is sought to be recovered.
18. As far as the prayer 4 of the motion is concerned, I have not been furnished with any evidence of the connection between the Senator of the County of Mombasa, the plaintiff and the firm of advocates representing the plaintiff as a basis for the allegation of conflict of interest. I am therefore not inclined to grant that prayer.
19. Prayer 3 of the application is allowed. The costs of the application shall abide the outcome of the suit.

**SIGNED, DATED AND DELIVERED ON 28 MARCH 2025**

**NGAAH JAIRUS**

**JUDGE**

