



**Thuku v Bartin & another (Criminal Appeal E090 of 2024)
[2025] KEHC 11987 (KLR) (Crim) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E090 OF 2024
AM MUTETI, J
JULY 30, 2025**

BETWEEN

BRIAN NDUNGU THUKU APPLICANT

AND

ALMASI JUMA BARTIN 1ST RESPONDENT

NOAH CHIULI KHAMEBA 2ND RESPONDENT

RULING

1. The applicant vide a Notice of Motion dated 25th July 2024 brought under certificate of urgency sought the following orders:-
 - i. The Appellant/Applicant did file suit in the Chief Magistrates Court at Nairobi, Milimani Law Courts in MCCRmisc/E2124/2024 on 14th June 2024 which was dismissed on the 22nd of July 2024 ex parte without hearing any of the parties herein.
 - ii. That the learned Honorable Magistrate erred in law and in fact in failing to appreciate and overlooked the jurisdiction granted under sections 2 and 2A of the [Debts \(Summary Recovery\) Act](#) (CAP 42 LOK) that empowers the Honorable Magistrates Court with unlimited jurisdiction to hear and determine complaints for the summary recovery of civil debts especially, as in this matter. The respondents fraudulently obtained credit by false pretenses promising that they would pay back the money which they never did now going to over 763 days in contravention of section 316 (b) of the Penal Code Cap.
 - iii. Mr. Almasi Juma Bartim (the 'Borrower' and 1st Respondent herein) entered into a Loan Agreement with Brian Ndung'u Thuku (the Lender/Applicant/Complainant herein) on the



7th of June 2022 for KShs. 1,000,000/= with a 14% interest rate accruing every 10 days after the execution of the agreement on the 7th day of June 2022;

- iv. Mr. Noah ChiuliKhaemba (the 'Cosigner/Guarantor' and Respondent/Defendant herein) cosigned as guarantor to the loan agreement being as jointly and severally liable in concert with the Borrower for the due performance of the agreement as per clause 6 & 17 of the agreement;
 - v. In this regard, the Cosigner/Guarantor offered, and the Lender accepted the logbook of Mitsubishi Canter KCU 228F as security in due performance of the agreement as per clause 5 of the agreement;
 - vi. In breach of the said agreement, the Borrower did not pay the Lender both the principal and 14% interest accruing on every 10th day after the execution of the agreement on the 7th day of June 2022;
 - vii. Despite demand and notice being duly served upon the respondents, they have not paid the accruing principal, interest, legal fees and costs accruing to KShs. KShs. 11,660,000/=.
 - viii. The Applicant is apprehensive that the Respondents will sell, charge, transfer title to the vehicle Mitsubishi Canter KCU 228F, or conceal or part with possession of the said motor vehicle so as to defeat the ends of justice and put the said security outside the reach of the Appellant/Applicant and this honourable court making the Applicant risk irreparable damage as there is no other security proffered by the Respondents.
 - ix. It is meet and just that the said vehicle be secured within the Central Police Station pending the hearing and determination of this matter.
 - x. That the Appellant has a prima facie case with a probability of success that if the injunction is not granted he shall suffer irreparable harm that cannot be compensated by way of damages and that the balance of convenience tilts in favour of the Appellant.
 - xi. It is meet und just to certify this matter as urgent and issue orders as prayed for in the annexed application by the Applicant.
2. The applicant served the application. MR. NDUNGÚ Advocate appeared before this court on 19th December 2024 and sought time to respond to the application contending that the same was improperly before this court.
 3. The court granted the respondent 21 days to file and serve their response.
 4. At the time of writing the Ruling the respondent had not yet responded thus the application is to be considered on the basis of the facts presented by the applicant and the law.
 5. The applicant has appealed to this court against the trial magistrates order dated 22nd July 2024 declining to exercise jurisdiction and declaring the matter to be of a civil nature.
 6. The applicant seeks to have the subject motor vehicle preserved pending the hearing of the appeal.
 7. This court on 24th April 2025 granted some interim relief to the applicant to preserve the subject motor vehicle until the hearing and determination of this application.
 8. The Debts (Summary Recovery) Act Cap 42 of the Laws of Kenya commenced on 26th May 1913.



9. The Long Title of the Act reads:-

“An act of parliament to make provision for the Summary Recovery of Civil Debts.”

10. The intention of parliament then was to have a law that would allow Summary recovery of civil debts through magistrates courts.

11. Section 2 of the Act provides:

“Recovery of civil debts

Any sum declared by any Act, whether past or future, to be a civil debt recoverable summarily may be recovered in the court of any magistrate of competent jurisdiction in the manner prescribed by this Act.”

12. The wording of the Section, applying the literal interpretation rule of Statutory interpretation, suggests that the recovery suit may be brought before any magistrate.

13. The Magistrates Courts Act came into operation on 1st August 1967. The Act was intended to establish Magistrates Courts to declare the jurisdiction and provide for the procedure of such courts among others.

14. The Magistrates Courts Act under Section 5 sets out the pecuniary jurisdiction of the various cadres of the magistracy.

15. However, the Magistrates Courts Act did not repeal the *Debts (Summary Recovery) Act* thus the Provisions of the Debt (Summary Recovery) Act are still applicable as though the Magistrates Court did not exist.

16. The Debt (Summary Recovery) Act was amended 1962 and 1969 to insert Section 2A of the Act on Jurisdiction of Magistrates and the amendment made it clear that a magistrate holding a subordinate court of the 1st class shall have jurisdiction to hear matters brought under the Act.

17. The application by the applicant on a prima facie basis stands on a sound legal basis and therefore this court has got no reason not to grant the orders sought pending the hearing of the appeal.

18. The orders are purely meant to preserve the subject motor vehicle to ensure that the applicant’s interest is not defeated by having the motor vehicle disposed and or transferred to a third party or destroyed so as to render it impossible for the applicant to recover should he succeed in the Appeal.

19. The balance of convenience tilts in favor of granting the orders sought by the applicant.

20. In any event the applicants wish is to have the motor vehicle held at the Central Police Station pending the hearing and determination of the matter which to this court appears to be a reasonable proposal.

21. The court takes judicial notice of the fact that our police station yards are almost filled with motor vehicles that may be subject of proceedings in court or their ownership is in dispute both in civil and criminal courts. To add the Mitsubishi Canter KCU 228 F to the list of motor vehicles held at central police station would not harm for purposes of securing it.

22. The court therefore makes the following orders:-

- a) That an Order be and is hereby directing the National Transport and Safety Authority not to allow any transfer of title from the name of Noah Chiuli Khaemba (The 2nd Respondent



herein) or issue a log-book or duplicate logbook to any person in respect to motor vehicle Mitsubishi Canter KCU 228F pending the hearing and determination of the Appeal.

- b) That an Order be and is hereby issued allowing any police officer in the company of the Applicant or his Advocates, agents and employees to enter and recover motor vehicle Mitsubishi Canter KCU 228F found in the possession of the Respondents, their agents, assigns or any other person whether found on any road, or parked in any place and have the same detained at the Central Police Station in Nairobi pending the hearing and determination of the Appeal.
- c) That an Order be and is hereby issued restraining the Respondent from selling, charging, parting with possession, dismember, or transfer title to motor vehicle Mitsubishi Canter KCU 228F to any third party pending the hearing and determination of the Appeal.

23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JULY 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Macharia for the Appellant

No appearance for Respondent

Applicant

