



**Laurie v Mohammed & 3 others (Commercial Case E147 of 2023)
[2024] KEHC 2679 (KLR) (Commercial and Tax) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E147 OF 2023
A MABEYA, J
MARCH 15, 2024**

BETWEEN

GODFREY ROWAN JAN LAURIE APPELLANT

AND

IRFAN MOHAMMED 1ST RESPONDENT

NEWTON KIRIMI 2ND RESPONDENT

INCH TRADING COMPANY LIMITED 3RD RESPONDENT

NATIONAL TRANSPORT AND SAFETY AUTHORITY 4TH RESPONDENT

RULING

1. This ruling is in respect of two applications. The application dated 5/7/2023 by the appellant and the application dated 20/7/2023 by the 1st respondent.

Application dated 5/7/2023 by the Appellant

2. The application was brought under section 3A of the *Civil Procedure Act* and Order 42 rule 6 and order 50 rule 1 of the *Civil Procedure Rules*. It sought injunctive orders to stop the respondents from disposing off or interfering with the ownership and quiet possession of the motor vehicle registration number KDG 277J Toyota Hilux Pick up (“the motor vehicle”).
3. The appellant’s contention was that he was the bonafide purchaser of the motor vehicle having acquired it from the 2nd defendant who was the agent of the 1st and 3rd defendant. That he had been in possession of the vehicle using it in his errands as a farm and product manager. That the Magistrates Court in MCCC E5960/2023 had directed that the motor vehicle be held in the police station until conclusion of the criminal trial against the 2nd respondent.



4. He averred that it is the civil court that is the proper forum to determine ownership of the motor vehicle. That the vehicle risks deterioration at the police station and the applicant is being denied the use of his said motor vehicle.
5. The application was opposed by the respondents vide a replying affidavit of Irfan Mohamed sworn on 20/7/2023. It was contended that the 2nd respondent was not allowed to transact on behalf of the 1st and 3rd respondent who were the duly registered owners of the motor vehicle. That the 1st and 3rd respondent entered into a sale agreement with the 2nd respondent whereby they sold the motor vehicle to him for Kshs. 5,305,000/-.
6. They denied the 2nd respondent ever being their employee and stated that he was a buyer who had unlawfully sold the motor vehicle to the applicant. That the orders of the Magistrate's court for the motor vehicle to be held at the police station had not been set aside and it was neutral to have the motor vehicle remain there.

Application dated 20/7/2023 by the Respondents

7. The application was brought under Article 159(2)(b) of the Constitution of Kenya 2010, Order 51 rule 15 of the *Civil Procedure rules* section 1A, 1B and 3A of the *Civil Procedure Act*.
8. The application sought that the interim orders issued on 7/7/2023 in favour of the appellant be set aside. The application was supported by the grounds on the face of it and the supporting affidavit sworn by Irfan Mohamed on 20/7/2023.
9. Their contention was that together with the 3rd respondent, they owned the motor vehicle. That they entered into a sale agreement with the 2nd respondent for the motor vehicle however the cheques issued by him were dishonored. The motor vehicle was repossessed and an advert made for payment. They contended that, in HC Criminal Revision No e177 of 2022 the judge directed that the motor vehicle do remain in the custody of the investigations officer. That the applicant misrepresented facts and got orders that he did not deserve and the court lacked jurisdiction to determine matters that had already been deliberated upon.
10. The appellant opposed the application vide a replying affidavit sworn by Godfrey Rowan Jan Laurie on 2nd August 2023. The appellant stated that the applicant and the 3rd respondent sold the motor vehicle to the 2nd respondent. It was stated that the court had concurrent jurisdiction with high court in Criminal Revision No e177 of 2022 and was most suited to determine the issue of ownership of the motor vehicle. That the motor vehicle would depreciate if left at the police station.
11. I have considered the pleadings before Court and the written submissions on record. There are two issues for determination. The first issue is whether the appellant is entitled to the injunctive relief sought.
12. The three conditions for the grant of a temporary injunction were settled in *Giella v Cassman Brown & Co. Ltd* [1973] E.A 385, which are to the effect that first, an applicant must show a prima facie case with a probability of success, secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. And thirdly, if in doubt, the court will decide an application on the balance of convenience.



13. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, Bosire, JA proffered the following definition of what a prima facie case is: -

“... So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter...a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”
14. The appellant has sought to stop interference with his use and possession of the motor vehicle registration number KDG 277J Toyota Hilux Pickup. It is the appellants position that the appeal was subject to the decision in MCCC E5960/2023 where the court directed that the motor vehicle be held in the police station until conclusion of the criminal trial.
15. According to the appellant, he is the rightful owner of the motor vehicle and by keeping it in the police station, he was bound to incur losses in his business and the motor vehicle stood the risk of being dilapidated. This position was opposed by the respondents who contended that the ownership of the motor vehicle was still an issue before the lower court and the police station was the best place to have the motor vehicle since it was a neutral ground.
16. I have considered all the parties' averments. I note that the issue of ownership and transfer of the motor vehicle gave rise to the criminal case in No. 5960 of 2022. It is said that the High Court in Criminal Revision E117 of 2022 gave directions that the said motor vehicle be held at the police station since it was the subject of the criminal case.
17. The facts of this case are simple, the 1st and 3rd respondents were the owners of the motor vehicle. They sold it to the 2nd respondent and give him possession thereof. He was however unable to pay as his cheques are said to have been dishonored. While in possession as such, the 2nd respondent sold the motor vehicle to the appellant for over Kshs.5,500,000/-. It would seem that he did not pass those proceeds to the 1st and 2nd respondent for the purchase of the motor vehicle. The two then repossessed the same from the appellant.
18. The issue of ownership is not a matter before the Criminal Court. The motor vehicle is only an exhibit. The issue of ownership is properly before the Chief Magistrate's Court exercising its civil jurisdiction. In this regard, the question that arises is, has the appellant demonstrated a prima facie case with a probability of success?
19. I think so. The appellant lawfully purchased the motor vehicle from the 2nd respondent who had its possession lawfully as the 1st and 2nd respondent had 'sold' it to him. Since the 2nd respondent had the possession thereof lawfully, and since he was purchasing it from the lawful owners, I think the exceptions to the Nemo Dat Rule may be applicable.
20. As regards irreparable loss and damage, if the orders sought are not granted, the motor vehicle may be subject to damage at the police station and or may be sold as the 1st and 3rd respondents still hold the title documents to the same.
21. In any event, the balance of convenience tilts in maintaining the status quo until the appeal is heard and determined.



22. Accordingly, I allow the application dated 5/7/2023 in terms of prayer nos. 4 and 5. It follows that the application dated 20/7/2023 cannot succeed and is hereby dismissed. The appellant will have the costs of both applications.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH, 2024.

A. MABEYA, FCI Arb

JUDGE

