



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 554 of 2004

ALOYS OBIEDI AKUMU.....PLAINTIFF

VERSUS

OXFORD UNIVERSITY PRESS (E.A.) LTD.....1ST DEFENDANT

MURIUKI NJAGAGUA T/A MURIUKI NJAGAGUA CO.ADVOCATES2ND DEFENDANT

ALEXANDER JAMES.....3RD DEFENDANT

RULING

By this Chamber Summons dated 27th May 2004 and amended on 12th July 2004 seeks orders:

- (i) That a temporary injunction be issued restraining the defendants whether by themselves, their servants or agents from interfering with the plaintiffs ownership, quiet possession and enjoyment of motor vehicle registration NO.KAH 900E make Range Rover.
- (ii) That a mandatory injunction do issue against the defendants requiring them to forthwith return the plaintiffs motor vehicle in a satisfactory condition and state of repair, to the plaintiff.
- (iii) That costs of this application be met by the defendants.

The application is based on the grounds-

- (a) That the plaintiff is the lawful bona fide and registered owner of the motor vehicle registration NO. KAH 900E make Ranger Rover.
- (b) That the plaintiff's motor vehicle has been unlawfully attached/repossessed by the 3rd defendant at the behest of the 1st and 2nd defendants.
- (c) That the plaintiff is a stranger to an agreement entered into between the 1st defendant and JOSMAN CONSULTANTS on 17th October 2000 on the strength of which the defendants have repossessed of the said motor vehicle.
- (d) That there being no contract or relationship between the plaintiff and defendants herein that would give rise to the attachment/repossession of the said motor vehicle, it is incumbent upon the defendants to forthwith return the plaintiffs motor vehicle from where they took away.

(e) That unless restrained by injunction the defendants who are currently in unlawful possession of the plaintiff's motor vehicle registration NO. KAH 900E appear set to sell or transfer the said vehicle and the plaintiff claims to suffer irreparable loss and damage, and is already incurring damage by way of loss of user since the repossession of the said motor vehicle.

The application is also supported by an affidavit sworn by the applicant in which he avers that on or about 16th September 1996 he bought the motor vehicle registration NO. KAH 900E make Range Rover from one F. Kromah and used his duty free facility and paid a sum of Shs.1,600,000/= for the said motor vehicle. His lawyer for that purpose was J.M. Nzioka trading in the name and style of Nzioka & Co. Advocates. The seller Mr. F. Kromah surrendered the original documents of the car to his agent a Mr. Barasa who proceeded to effect the local registration and transfer of the said motor vehicle to the applicant.

He annexed the log book which bears his name as the registered owner. He instructed Mr. Barasa to deposit the original logbook with Mr. Nzioka for safe custody and collected only a copy but left the original with Mr. Nzioka who also kept for him other important documents for safe custody; that in December 2003 upon his transfer to Moi University Eldoret, he left his said motor vehicle at the house of Mr. Rimbers; that when on 17th May 2004 he went to collect his said motor vehicle from Mr. Rimbers, Mr. Rimbers informed him that some people claiming to be repossession agents had come and taken the motor vehicle away; that on enquiry he came to find out that his said motor vehicle had been pledged as security for a credit facility given to Mr. Nzioka by the 1st defendant, that the said Mr. Nzioka had neither authority nor capacity to offer his said motor vehicle as a security and neither does the 1st defendant have any lawful reason to “**repossess**” and hold on to his motor vehicle.

The application is opposed. The 1st Defendant concedes that it gave instructions to repossess the plaintiff's motor vehicle registration NO.KAH 900E and in its replying affidavit sworn by one Suleiman Gakuria avers that a Mr. J.M. Nzioka approached the 1st defendant and sought a credit facility to the tune of Shs.1 million; that to safeguard its interests the 1st defendant sought security from the said Mr. Nzioka who in turn placed as security his motor vehicles, namely:

- (i) KAD 474 U – Ranger Rover
- (ii) KAB 242 E- Volvo
- (iii) KAH 900 E- Ranger Rover;

That further to the foregoing the said Mr. Nzioka gave the 1st defendant signed transfer forms in its favour as security for the foregoing motor vehicles and at the same time executed an agreement dated 17th October 2000 to repay the money arising from the credit accorded to the said Mr. Nzioka; that it is on the basis of the agreement dated 17th October 2000 that the 1st defendant exercised its rights to repossess the said motor vehicles pledged as security once the borrower Mr. J.M. Nzioka failed to repay his debt due and owing to the 1st defendant.

The respondents were served but never appeared to oppose the application and the same proceeded ex parte Mr. Mutuku counsel for the applicant submitted that the said motor vehicle the subject matter of this suit belongs to the applicant and is registered in his name and copy of the logbook annexed thereto confirms this.

This is also conceded by the respondents who in paragraph 10 aver that Mr. Nzioka had intimated to the 1st defendant that he had bought motor vehicle KAH 900E from its previous owner, but he had not transferred it to himself because he did not want to pay duty as yet. But there is no documentary evidence to confirm that i.e. Sale Agreement signed by the previous owner and himself and the amount of the purchase price.

For the plaintiff to succeed in his application he must show that:-

- (a) he has a prima facie case or
- (b) that the balance of convenience tilts in his favour; and
- (c) that he would suffer irreparable damage if his prayer for injunction is disallowed.

These principles were stated in the case of **GIELLA VS. CASSMAN BROWN & CO. LTD 1973 EA 358.**

In this application the plaintiff has established that the motor vehicle the subject matter of this suit is registered in his name. The applicant was neither a party nor a beneficiary to the credit facility which led to the repossession of the said motor vehicle of the applicant. The credit facility was given to one J. K. Nzioka who had neither authority nor capacity to offer the applicant's vehicle as security and it is difficult to see how the 1st defendant could accept the motor vehicle KAH 900E whose logbook clearly shows that the same is registered in the name of applicant for the credit facility advanced to a Mr. J.K. Nzioka to safeguard its interest without proof or producing any document to show that actually he had purchased the said motor vehicle from the previous owner but that he had not transferred the same to himself because he did not pay duty as yet.

For the above reasons I am satisfied that the applicant has satisfied the principles as stated in the case of **GUELLA VS. CASSMAN & BROWN** stated above and this is a suitable case where status quo must be restored and the status quo in this case is that the motor vehicle KAH 900E should be restored to the applicant.

Consequently I allow the applicant's application in terms of prayers 2, 3 and 4 of the Amended Chamber Summons dated 12th July 2004.

Dated and delivered at Nairobi this 14th day of September 2006.

J.L.A. OSIEMO

JUDGE