

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

HCT - 00 - CC - MC - 0034 - 2013

HASSAN IBRAHIM MOHAMED ::::::::::::::::::::::::::::::
APPLICANT

VERSUS

GLOBE TROTTERS LTD & OTHERS ::::::::::::::::::::::::::::::
RESPONDENTS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

Hassan Ibrahim Mohamed the Applicant in this application seeks orders to overturn the order of Chief Magistrate Mengo which ordered him to deposit 3000 US Dollars so as to obtain the release of his Motor Vehicle Registration No. SSJS510A/Z9950 Scania Truck.

The Respondents in this application are Globe Trotters Limited, Shabbele Transporters Company, Jamil Mohamed and Ali.

The background to this application is pretty straight forward.

On the 14th day of August 2013, the first Respondent Globe Trotters Limited entered into an agreement with Shabbele Transporter Company in which the latter was to transport three truck full of mosquito net from Kampala to Kisangani on behalf of Globe Trotters.

On the way one of the trucks sustained an engine knock and so there was a delay.

The two contracting parties then entered into an undated Memorandum of Understanding (MOU), that Shabbele Transport company would after 10 days provide alternative transport.

It is not clear whether the 10 days expired, but on the 28 January 2013 Globe Trotters filed a suit against Shabbele Transporters, Jamil Mohamed and Ali who were probably the shareholders or properties of sorts.

On the 29 October 2013, the learned Chief Magistrate under Miscellaneous Application No. 1077 of 2013 issued an exparte order attaching motor vehicle SSJS510A/Z9950 Scania truck before judgment.

The Applicant claiming ownership of the motor vehicle wrote to the court through his Advocates Manawi Wamimbi Advocates and offered to execute a bond of 12,100 US Dollars which according to him was the value of the claim. The reason he gave was that the motor vehicle was his "tool of trade".

On 31 October 2013, the Applicant filed a Notice of Motion seeking orders that;

“The motor vehicle registration No. SSJS510A/Z9950 be released from attachment.”

The ground was that the vehicle belongs to him and not the Respondents. He deposed that the Respondent transport company had merely hired it from him and that in any case this motor vehicle delivered the goods in Kisangani.

Lastly, that he had not been a party to the proceedings of Civil Suit No. 2127 of 2013.

He attached a motor vehicle logbook indicating Hassan Ibrahim Mohamed as the owner of the vehicle.

I have combed the file before the Chief Magistrate Court and have found no affidavit in reply to Application No. 1095. I therefore conclude that none was filed.

Suffice it to say that on the 6 November 2013 when the application came up for hearing, court adjourned to 21 November 2013 to give the Respondent a chance to file a reply.

Record shows that before the fixed date the learned Chief Magistrate on her own volition issued a Chamber Summons dated 11 November 2013 summoning the parties to attend her chamber the following day 12 November 2013, she summoned;

“Let all parties concerned attend the Chief Magistrates Chambers on the 12th day of November, 2013 at 9:00 a.m. in the matters pertaining the attachment and release of motor vehicle Registration No. SSJS510 A/Z 9950 Scania Truck white in colour parked at court premises”

Whoever moved her is unknown because court record does not show. The 21 November 2013 was yet to come. The Respondent who had asked for time to file a reply had not done so which left the affidavit of the Applicant undisturbed .

On the Applicant's affidavit was attached copy of the log book indicating the Applicant as the owner. This was unchallenged. The fact remained unchallenged even when the matter came to this court. Lule Paul in para 4 of the affidavit in reply to this application deposed,

“That the Respondent (Globe Trotters Limited) filed Civil Suit No. 2127 of 2013 to recover USD 12,300 against the three Respondents and applied to attach before judgment Motor vehicle No. SSJS510A/Z9950 which was registered as belonging to the three Respondents (See Court Order “B”).

With all the respect court order marked “B” was not a card of registration. Neither does it confer ownership on the Respondents. It is therefore not clear as to where Lule Paul got those unsupported averments.

Coming back to the application before the learned Chief Magistrate, there was no hearing. Without hearing she proceeded to hold that “at

this stage we may not dig into how they are in possession of the said vehicle”, yet at the same time she said its because they were in possession that the attachment before judgment was justified.

It is this court’s finding that that Applicant in being denied a hearing, there was a breach of fair trial, clearly spelt out under Article 28 of the 1995 Constitution.

Furthermore, since the evidence of the Applicant in the learned Chief Magistrates Court was not challenged, I find that the learned Chief Magistrate reached a conclusion not supported by any evidence.

Her decision being without foundation, is hereby set aside.

It is ordered that the Applicant be refunded the 3000 US Dollars he deposited.

The Respondent namely; Globe Trotters Limited shall bear the costs of this application.

It is so ordered.

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David K. Wangutusi

JUDGE

Date: 26 - 02 - 2014