



**REPUBLIC OF KENYA**

**IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI**

**TRIBUNAL CASE NO. 236 OF 2019**

**MOHAMED ABDI ALI.....CLAIMANT**

**VERSUS**

**GARISSA MADOGO SACCO (GAMAMA).....1<sup>ST</sup> RESPONDENT**

**ALI AHMED DAHIR.....2<sup>ND</sup> RESPONDENT**

**RULING**

The matter for determination is a Notice of Motion application dated 3.5.19 seeking the following orders:-

1. *That this honorable tribunal be pleased to certify the application as urgent and service of the same upon the defendants/respondents be dispensed with in the first instance.*
2. *That pending the hearing and determination of this application, the Honorable Tribunal be pleased to order the Defendant/Respondent to reinstate the suspended Vehicle Registration Number **KCF 389G** and **KAU 271B** back to the route.*
3. *That pending the hearing and determination of this suit, the Honorable Tribunal be pleased to order the Defendant/Respondent to reinstate the suspended Vehicle Registration Number **KCF 389G** and **KAU 271B** back to the route.*
4. *That this Honorable tribunal be pleased to issue an order against the respondent/defendants to compensate the applicant/plaintiff the loss he has incurred during the suspension.*
5. *That the Honorable Tribunal be pleased to issue orders that it may deem fit for purposes of justice.*
6. *That costs of this application be in the cause.*

Based on the ground on the face of the application supported by an affidavit of *MOHAMED ABDI ALI* the claimant herein.

The same application was also refilled on 7.8.2019 and dated 31.7.19.

The same is opposed by a replying affidavit of **ALI AHMED DAHIR**, the 2<sup>nd</sup> respondent and chair to the first respondent filed on 18.8.19 and further replying affidavit filed on 1.10.19.

Interim orders were granted in terms of prayer 2 of the application on 2.8.19.

The application was ordered to be canvassed by way of written submissions.

Both application were ordered to be dispensed together by way of written submissions on 23.8.19.

The applicant filed their written submissions on 30.9.19 in regard to their application dated 31.7.19. the applicant submitted that he is the bona fide owner of motor vehicle KCF 389G and KAU 271B and that he is a member of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent failed to pay TLB and PSV and inspection expenses.

That on 17.1.19 the respondent called the claimant and also wrote a letter informing the claimant of suspension of his motor vehicles.

That on 30.1.19, the respondent failed to reinstate the motor vehicles.

That the respondent infringed the rights the claimant/applicant without issuing notice.

That the claimant stands to suffer irreparable damage that cannot be compensated by way of damages and that the balances of convenience tilts in favour of the claimant and they pray that the application to be allowed.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed their joint submissions on 4.10.19 and submitted that the motor vehicle KAU 271B is owned by CHARLES KIAMA and not the claimant .

That the applicant has brought his claim based on a sale agreement made in the year 2013 and six years later the applicant has no log book of the same.

That the applicant is not the owner of the 2 motor vehicles as alleged in the application and in the supporting affidavit hence he lacks *locus standi*.

That the applicant dumped his entire shareholding which was paid to him in full hence he is not a member and he lacks *locus standi*.

That the respondent was engaged in gross misconduct that prejudiced the entire sacco having been arrested in 2.1.2019 charged and convicted after a plea of guilty for violation of route service license and the driver was ABDULLAHI IDLE KEDIE of the motor vehicle KCA 389G.

That the said driver travelled beyond the sacco designated route and such violation attracts sanctions against the entire sacco.

That due to this, the 1<sup>st</sup> respondent was at liberty to terminate the applicant's membership.

That there have been numerous complaints against the applicant conduct as per the affidavit of other members since he fights, insults and disrupts the set stage orders.

That according to the by-laws membership can be terminated for gross misconduct.

That the applicant is given a fair trial and dismissed fairly.

That the applicant's motor vehicles have no inspection stickers and his share contributions were already refunded and the orders in force are a danger to the public who are ferried by the said motor vehicles.

We have carefully considered the evidence on record, submissions by the parties and the annexures therein. We have also noted the prayers sought for in the main suit dated 3.5. 19. We note that the intention to sue/demand to sue was only issued for motor vehicle KCF 389G as per the letter dated 30.1.19.

We have also noted that the applicant has only attached ownership documents for motor vehicle KAU 271B. There is no proof of ownership for motor vehicle KCF 389G.

We have also noted the minutes of the Annual General Meeting held on 10.1.19 that the applicant was suspended with a majority vote for motor vehicle KCF389G vide minutes of 6.10.19.

We also note that after the order from the magistrate court dated 26.2.19, the applicant was required to submit various documents for purposes of application for NTSA.

We also note that the sacco only suspended motor vehicle registration number KCF 389G and not KAU 271B as alleged. We also note that the alleged payment cheques have not been provided by the respondent.

There are very many anomalies in the matter especially the fact that the applicant has sought orders in respect of motor vehicle KCF 389G yet he has not provided sufficient proof that the said motor vehicle belongs to him.

That the purported suspension of KAU 271B is not supported by any evidence on record.

Essentially the prayers sought in the plaint dated 3.5.19 and the other plaint dated 31.7.19 are for only motor vehicle registration number KCF 389G and the other motor vehicle KAU 271B included in the notice of motion dated 3.5.19 and application dated 31.7.19 is not in the main claim.

We note with concern that there are two plaints in the matter and two similar application whose contents are not supported whatsoever by the plaints. We also wonder which of the plaints is properly on record and which application the applicant relies on. However, based on both application we find that, the applicant has not approached the seat of justice with clean hands and the document, on record or neither here nor there.

We therefore find that both applications dated 3.5.19 and 31.7.19 have no merits in the first instance and have not been proved to the required threshold. We therefore dismiss both applications in their entirety as an abuse of court process with costs.

Read and delivered in open court, this **7th** of **November** 2019.

In the presence of:

**Claimant:** Non-appearance.

**Respondent:** Non-appearance.

**Court Assistant:** Leweri and Buluma.

**B.Kimemia - Chairman-signed.**

**R.Mwambura – Member-signed.**

**P.Swanya - Member-signed.**



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)