



**Munyilu & another v National Police Service & 4 others (Miscellaneous Application E023 of 2023)
[2024] KEHC 7991 (KLR) (Anti-Corruption and Economic Crimes) (25 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7991 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
MISCELLANEOUS APPLICATION E023 OF 2023**

F GIKONYO, J

JUNE 25, 2024

BETWEEN

JOSEPH MUTINDA MUNYILU 1ST APPLICANT

MOHAMMED MUHUMED ABIKAR 2ND APPLICANT

AND

NATIONAL POLICE SERVICE 1ST RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY 2ND RESPONDENT

VICTOR NYAMBOGO 3RD RESPONDENT

KEVIN NYAMBOGO 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The applicants claim to be legitimate owners of motor vehicles registration numbers KCL 420Y, KCB 747G, KBU 949M, KCQ 528R, KBN 559C, KCX 163H, KCX 663Z, KDC 547E, KCS 101E, KCL 674F, KDB 763S, KDL 734G and KCH279D. Some of the vehicles are individually owned, and others are jointly owned, by the applicants for their public transportation business plying Nairobi-Kisumu route. The vehicles were bought within a span of 10 years.
2. The 1st respondent wrote a letter dated 30/05/2023 to, requiring the 2nd respondent to place a caveat on the applicants' suit motor vehicles. The 1st respondent was acting on instructions of the 3rd and 4th respondents.
3. In the said letter the 1st respondent stated that it was investigating the suit motor vehicles in relation to money laundering and the vehicles were suspected to be proceeds of crime.



4. On the basis of the said letter, the 2nd respondent placed caveats on the suit motor vehicle sometime in 2023.
5. As a result of the registration of the caveats, the applicants have been hindered from transacting freely with suit vehicles thereby causing them great prejudice including depriving them of potential business opportunities.
6. The applicants argued that, the 1st respondent's agents have subjected the applicants to unnecessary harassment, humiliation, embarrassment, and torture which necessitated the filing of a complaint with the independent policing oversight authority on 20/07/2023 detailing the harassment and humiliation.
7. The applicants have sought to challenge the validity and legality of the caveats herein on the basis of failure to be served with notice, failure to be given written reasons, and abuse of office (irrationality).
8. The applicants have urged this court to order the 2nd respondent to remove the caveats registered in June 2023 on the applicants' vehicles.

The application

9. The Notice of Motion filed on 28/07/2023, is asking the court to issue; an order to remove the caveats placed on their vehicle; a permanent prohibitory injunction restraining the 2nd respondent from registering any caveats as that prevents the applicants from transferring and disposing of or conducting other dealings with motor vehicle registration numbers: KCL 420Y, KCB 747G, KBU 949M, KCQ 528R, KBN 559C, KCX 163H, KCX 663Z, KDC 547E, KCS 101E, KCL 674F, KDB 763S, KDL 734G and KCH279D; a declaration that the caveats placed by the 2nd respondent are unlawful and illegal; and order that, costs of the application to be provided for.
10. The application is premised on sections 1A, 1B, and 3A of the *Civil Procedure Act*, order 51 of the *Civil Procedure Rules*, and sections 81, and 82 of the *Proceeds of Crime and Anti-Money Laundering Act*.
11. The application is based on the grounds set out in the application and the supporting affidavit of Joseph Mutanda Munyilu sworn on 27/07/2023.

The responses

12. The 3rd and 4th respondents opposed the application vide grounds of opposition dated 09/11/2023, to wit, that; i) the application is incompetent, ii) the applicants have not demonstrated sufficient grounds for lifting the caveats in question, and iii) the application lacks merit.

Directions of the court

13. The application was canvassed by way of written submissions. The applicant filed written submissions dated 21/09/2023. The respondents have not filed.
14. The respondents were served with the application dated 27/07/2023 and orders issued on 28/07/2023. Service upon the respondents is evidenced by the affidavit of service by Kyalo Kamina sworn on 04/08/2023.
15. The counsel for the 3rd and 4th respondents was served with a hearing notice dated 18/04/2024 for highlighting of submissions on 22/04/2024 as evidenced by an affidavit of service sworn by Kyalo Kamina on 19/04/2024.
16. On 22/04/2024, this court directed the applicants to serve the orders of that day and ruling notice.



Analysis and Determination

17. This court has considered the application herein, the affidavit in support thereof, the grounds of opposition, and the applicants' submissions.
18. The main issues for determination are;
 - i. Whether the caveats placed by the 2nd respondent on applicants' vehicles are valid and legal.
 - ii. Whether the applicants are entitled to the orders sought.

Validity of the caveats

19. The applicants submitted that the caveats placed on their motor vehicles are invalid for three reasons; i) failure to give notice before registering the caveats; ii) failure to give written reasons for registering the caveats; and iii) were registered pursuant to abuse of office (irrationality principle).
20. The applicants lamented that, hitherto, despite repeated demands, the 1st respondent has failed to furnish them with any notice, cogent reason, or proof of anything raising suspicion or alleged fraudulent transactions related to the subject motor vehicles.
21. The applicants contend that the caveats were placed unlawfully and on mere speculations which the 1st respondent has failed to prove.

Failure to give notice before registering the caveats

22. The applicants submitted that the 1st and 2nd respondents violated the rules of natural justice that no man shall be condemned unheard by failing to give notice before registering the caveat on their motor vehicles. The applicants relied on Article 40 of the *Constitution*, the cases of Republic v the Honourable the Chief Justice of Kenya & others Ex Parte justice Moijo Mataiya Ole Keiwua Nairobi HCMCA No. 1298 of 2004, and Kenya Human Rights Commission & Another V Non-Governmental Organizations Co-Ordination Board & Another [2018] eKLR
23. The applicants contend that the decision to register caveats on the applicants' motor vehicle has had serious adverse effects on the applicants including limiting the applicants' power to commercially deal with the motor vehicles as they please as envisaged in article 40 of the *Constitution*. To date, the applicants have not been notified of the decision to place the caveat.
24. The applicants contend that given an opportunity to be heard they would explain the source of the monies used to buy motor vehicles from their public transportation business coupled with their dealings of stocking and selling cereals. They added that they acquired the vehicles legally through their savings and loans advanced to them by various banking facilities.

Failure to give written reasons for registering the caveats

25. The applicants submitted that they had not received any reason for the decision to register caveats on their motor vehicles despite asking for written reasons. The applicants relied on Article 47(2) of the *Constitution* and the cases of *Kenya Human Rights Commission v Non-Governmental Organizations Co-Ordination Board* [2016] eKLR, and *Republic V Kenya Revenue Authority Ex Parte Dennis Joseph Shijenje; National Safety Transport & Safety Authority [Interested Party]* [2022] eKLR.



Abuse of office(irrationality)

26. The applicants submitted that the decision by the 1st respondent to request for caveats to be entered on applicants' motor vehicles was completely fueled by malice and as such is completely irrational and an abuse of power/office. The applicants relied on the cases of *Republic V Public Procurement Administrative Review Board & 2 Others Ex Parte Rongo University* [2018] eKLR, *Republic V Kenya Revenue Authority Ex Parte Dennis Joseph Shijenje; National Safety Transport & Safety Authority (Interested Party)* [2022] eKLR, and *Patrick Olindah Aswani V Assets Recovery Agency; Norren Chege (Interested Party)* [2020] eKLR.
27. The applicants contend that the 1st respondent acted on instructions from the 3rd and 4th respondents who were out to frustrate the applicants' business venture and cause economic sabotage.
28. The applicants contend that the 3rd and 4th respondents are using the police officers to settle scores with applicants on grounds that the applicants are in breach of the contract entered between the applicants and the 3rd and 4th respondents, the said agreement which the respondents are now claiming that the applicants breached was in fact entered into under duress as the agents of the 1st respondent presented the said agreement to them and were required to sign so that they could be free.
29. The applicants contend that certain officers have allowed themselves to be used in pursuit of a personal vendetta against the applicants by the 3rd and 4th respondents.

Quite a revelation

30. The applicants have loudly accused the 3rd and 4th respondents of using certain police officers to settle scores with the applicants on the basis alleged breach of a contract entered into between the applicants and the 3rd and 4th respondents. The applicants stated that, the said agreement was entered into under duress as the agents of the 1st respondent presented the said agreement to, and required them to sign it so that they could be free.
31. According to the applicants, the caveats are in pursuit of a personal vendetta against the applicants by the 3rd and 4th respondents.
32. The applicants further stated that, the 1st respondent's agents have subjected them to harassment, humiliation, embarrassment and torture necessitating the filing of a complaint against the police officers concerned with IPOA. They annexed a statement with IPOA as annexure marked JMM5.
33. Yet, the applicants submitted that, given an opportunity to be heard they would explain the source of the monies used to buy the motor vehicles, which is from their public transportation business and their dealings of stocking and selling cereals. They added that they acquired the vehicles legally through their savings and loans advanced to them by various banking facilities.
34. Attainment of a collateral advantage is never an objective of criminal process, but abuse of process. Thus, the law frowns upon use of criminal process to settle a civil debt or contractual obligation or personal vendetta.
35. Of great concern is that, the respondents have been accused of abuse of power, and using certain police officers to execute 'a personal vendetta' and 'to enforce an agreement that was procured through duress' against the applicants. Yet, the 1st and 2nd respondents did not file any response. The 3rd and 4th respondents filed only grounds of opposition which are ordinarily severely limited, and may not offer any reasonable or meaningful explanations to unravel such heavily-loaded factual matters that impinges of the integrity of some of the members of the police service. The 3rd and 4th respondents



have been accused of using and ‘paying’ the police to use criminal process to force performance of a contractual obligation.

36. The respondents did not also file any submissions to expound on anything. Their inaction is to be seen within this emerging framework which brings the court to restate: -

‘...Without imputing any ill-will, and it is not the case here, sometimes, persons manning the public institution concerned and in the custody of relevant information, may be terribly complicit and drenched in crime, and partakers of its proceeds (*EACC v. Daniel Mnywoki Wambua* [2024] eKLR).

37. NTSA placed caveats upon the suit motor vehicles on the advice of the 1st respondent and at the behest of the 3rd and 4th respondents over some ‘contract’ with the applicants. NTSA has not provided any reasons for the placing and sustaining of the caveats despite demand for the reasons by the applicants. There is also nothing from 1st respondent or a word of any pending investigations into the matter. Nonetheless, the caveats have remained in situ.

38. The applicants claim that the 1st respondent wrote a letter dated 30.5.2023 to the 2nd respondent requiring them to place caveats on the suit motor vehicles ‘on suspicions of the same being used in money laundering and the same are suspected to be proceeds of crime’ (para. 10 of the supporting affidavit).

39. Money-laundering, corruption and economic crimes are serious, and transboundary crimes. Nations recognize the importance of addressing the transnational organized crimes and illicit financial flows in the context of sustainable development. And, the need to specifically target the reduction of transnational organized crimes & illicit financial flows, with emphasis on international, regional and inter-agency cooperation to achieve this goal. Agencies like the police, ARA, EACC, who have the power to investigate and prevent these crimes are expected by the nation and the people of Kenya to carry out their mandates, tapping on international, regional and domestic inter-agency cooperation, with diligence and employing razor-targeted approaches, to reduce the incidences of these crimes.

40. The court expressed of the serious nature and effects of these offences, whilst maintaining a proportioned balance between the rights of the applicant and public interest in asset forfeiture and combating of these crimes as follows: -

Therefore, the need for proportioned balance between the constitutional rights of the respondent, on the one hand, and public interest in the recovery or forfeiture of illicit assets or proceeds of crime as a way of combating crime, in this case, corruption, economic crime and money-laundering, on the other. These are serious organized, and transboundary crimes which have caused the world and nations, severe migraine, and huge economic leakages and social squeeze, prompting, international, regional and national concerted focus and efforts through tools such as *United Nations Convention against Corruption*, *United Nations Convention against Transnational Organized Crime*, *African Union Convention on Preventing and Combating Corruption*, to mention but a few (*EACC v. Daniel Mnywoki Wambua* [2024] eKLR).

41. Regrettably, Kenya is one of the latest countries to be placed on the Financial Action Task Force’s (FATF) grey list which is an indictment of the country’s ability to effectively tackle financial crimes especially money-laundering, economic crimes, terrorism financing and proliferation financing. The effects of such listing on the citizens of Kenya is not a trifle, as may be subjected to arbitrary declarations and due diligence checks when they visit or travel to other jurisdictions.



42. Within the above reality which has left the country at cross-roads, it is extremely concerning that a claim of money-laundering and proceeds of crime was expressed upon the suit assets by the police in their letter dated May 30, 2023. Yet, they have not seen any need to enter these proceedings or at least offer a word on whether there is an on-going investigation, and its status.
43. Most concerning is that, the applicants have alleged abuse of power, harassment, torture, and use of certain police officers to execute another person's 'personal vendetta' and 'to enforce an agreement that was procured through duress' against the applicants.
44. These proceedings are aimed at, inter alia, the removal of the caveats. The applicants accused NTSA of not taking steps to ameliorate the applicants' position despite being informed through demands by the applicants. NTSA did not also file any response to the application herein. They have made out a case for removal of the caveats.

Conclusions and orders

45. Under Section 8 of the *Traffic Act*, the applicants are the registered owners of the suit motor vehicles, thus, the prima facie owners. A caveat on property would affect the rights of the applicants. Thus, they have a right to be given reasons why the caveats have been placed upon their vehicles. This is a requirement of the rules of natural justice. There are no reasons that have been provided by the 2nd respondent for the sustenance of the caveats despite repeated requests for them.
46. The police have also not given any reason for maintaining the caveats. They have not stated whether there are on-going investigations. They have not also provided any response to the accusation of abuse of police power.
47. Although these proceedings are not about abuse of police powers, allegations were made against the police in the context of use of criminal process to attain a collateral advantage for the 3rd and 4th respondents. Thus, a general statement that, the police should never allow themselves to be used by unscrupulous individuals to achieve a collateral advantage for any person; be it settlement of a debt or performance of a contractual obligation or a personal vendetta.
48. Recapitulation of these issues bring the court to state that: The Inspector General of Police should take note of, and be worried about: i) the serious allegations made against his officers; and ii) that suspicion of the vehicles in question being involved in money laundering and being proceeds of crime were expressed in writing by his officers, yet, no serious action or investigation has been undertaken- at least from the information from the applicants.
49. Be that as it may, other than costs, the Notice of Motion filed on 28/07/2023, is asking the court to order; the caveats to be removed; a permanent prohibitory injunction restraining the 2nd respondent from registering any caveats on the vehicles; and, a declaration that the caveats placed by the 2nd respondent are unlawful and illegal.
50. However, on record, there is, the letter by the police dated May 30, 2023 which expressed suspicion of the vehicles herein being used for money laundering as well as being proceeds of crime. Given the serious nature and effects of offences such as money laundering and the need to recover proceeds of crime, a court of law should be careful not to proclaim a foreclosure to investigations except for good reasons. This context is important. A permanent prohibitory injunction sought herein would be a foreclosure to any investigation upon, or preservation of the properties under investigation, and, therefore, not appropriate order to make despite the finding that the respondents have not explained the reasons why the caveats should be sustained.



51. Proportioned balance, therefore, commends the following appropriate orders: -

- a. The 2nd respondent shall remove the caveats which were placed upon the suit motor vehicles herein registration number; KCL 420Y, KCB 747G, KBU 949M, KCQ 528R, KBN 559C, KCX 163H, KCX 663Z, KDC 547E, KCS 101E, KCL 674F, KDB 763S, KDL 734G and KCH279D.
- b. The removal of the caveats does not foreclose any lawful investigation upon, or preservation of, the said motor vehicles for money laundering or for tracing and recovery of proceeds of crime by the 1st respondent or any other relevant government agency.
- c. This order be served upon the Inspector General of Police and the CEO of NTSA.
- d. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 25TH DAY OF JUNE, 2024.

F. GIKONYO M

JUDGE

In the presence of: -

1. Ms. Misiati h/b for Ms. Musando for applicants
2. Raymond Simatwa C/A
3. NA for 1st and 2nd respondent
4. Amuga for 3rd and 4th respondent- absent

