



**Mwau v National Police Service & another (Civil Suit 80 of 2018)
[2023] KEHC 21744 (KLR) (Civ) (25 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21744 (KLR)

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

CIVIL

CIVIL SUIT 80 OF 2018

AN ONGERI, J

AUGUST 25, 2023

BETWEEN

JOHN HARUN MWAU PLAINTIFF

AND

NATIONAL POLICE SERVICE 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

JUDGMENT

1. The plaintiff in this case, John Harun Mwau(hereafter referred to as the plaintiff only) has sued the two defendants The National Police Service and The Attorney General(hereafter referred to as 1st and 2nd defendants respectively) seeking compensation for his motor vehicle registration no. KAH 268K Range Rover HSE which was unlawfully detained at Central Police Station from 23/6/2011 to date.
2. The plaintiff stated in his plaint dated 3/4/2018 stated that he was a popularly elected Member of Parliament of Kilome constituency between 2008 and 2013 and owner of the motor vehicle registered as KAH 268K make Range Rover HSE (hereinafter referred to various as the “plaintiff’s motor vehicle” and “the motor vehicle”).
3. The 1st defendant is the National Police Service, a security organ under Article 239(1) (c) of *the Constitution* led by the Inspector General, the successor of the Commissioner of Police. The defendant’s duty includes protecting the people of Kenya, their rights, freedoms and property
4. The 2nd Defendant is the Honorable Attorney General and is joined in the suit pursuant to Article 156(4) (b) of *the Constitution*, Section 12 of the *Government Proceedings Act* and Order 1 Rule 11 of the Civil Procedure Rules.



5. The plaintiff further stated in the said plaint that on 23rd June 2011, on or before 10.00 pm or thereabouts, the Plaintiff's motor vehicle, with the bodyguard and the driver inside, was being driven along City Hall Way to Parliament to pick up the Plaintiff. When just past the Garden Square Restaurant, the motor vehicle was shot at by unknown persons in a car, which then sped away.
6. That Garden Square is a popular restaurant, with a huge crowd and a bustle of activities where patrons routinely partake in social drinking, hold wedding committee meetings and funeral arrangements late into the night.
7. That On the date and time of the shooting, there was still a crowd of patrons. Further, it is next to the KICC which has a police station; next to the Supreme Court of Kenya; near the Intercontinental Hotel; and opposite County Hall.
8. After the vehicle was shot at, the Police visited the scene, the motor vehicle was photographed by the police, who physically took the vehicle from the Plaintiff's driver and confiscated it. Using a police driver, the Defendants officers drove the vehicle to the Central Police Station.
9. Further that on the 26th July, 2011, the Plaintiff accompanied by his driver, John Ngugi Mbugua went to the Central Police Station to collect the vehicle but were informed that the Commissioner of Police had inspected the motor vehicle at the Central Police Station and directed the vehicle not to be released until further notice.
10. The Plaintiff wrote on the next day to the Defendant seeking the release of motor vehicle, and without any written reply, it was verbally repeated to him that the instructions from above were that the motor vehicle be detained until further notice.
11. The Plaintiff is aggrieved by the Defendant's actions of taking away and/or of unlawfully detaining the Plaintiff's motor vehicle registered as KAH 268K for over six years and exposing it to the vagaries and element of weather and human intervention rendering it unusable to the Plaintiff, which acts of the Defendant are and were unjust, unlawful and done in bad faith.
12. The unlawful and illegal seizure, detention and wastage of the Plaintiff's motor vehicle from the 23rd and/or 24th of June, 2011 to date was done without the Plaintiff's authority, permission or consent and as such the Defendant's acts are thus unlawful, unconscionable, unreasonable and are done in extreme bad faith.
13. The Plaintiff avers and thereon alleges that the subject motor vehicle was not an exhibit and is not subject to any dispute on ownership.
14. The Plaintiff avers and thereon alleges that at the time of seizing the Plaintiff's motor vehicle, the Driver's side door window was intact save for a bullet hole, but at the time of viewing the subject motor vehicle at the Police Station on the 24th of June, 2011, the window had been shattered and was in fact missing.
15. The Plaintiff avers and thereon alleges that the Defendant at all material times knew that considering the nature of the motor vehicle, it being a Range Rover, in order not to cause it serious mechanical damage and disrepair, the vehicle required constant and continuous starting, running the engine, and constant maintenance and repair.
16. The Plaintiff avers and thereon alleges that in order to achieve their bad faith objective, knowing that they had broken or caused the driver's window to be broken, the Defendant deliberately placed the Plaintiffs motor vehicle on a dusty open yard without any cover or protection in order to absorb and subject the vehicle to the heat of the sun, dust, and heavy rains from 2011 to date including other



vagaries of the weather and human intervention through vandalism, thereby causing it irreparable damage and knowingly rendering it unusable to injure the Plaintiff.

17. The Defendant has subjected the Plaintiff and his motor vehicle to illegal, unjustifiable and unjust acts through wanton seizing, confiscating, and detaining the Plaintiff's motor vehicle wherefore the Defendant has deliberately and negligently wasted the Plaintiff's vehicle beyond use under pretext that the motor vehicle KAH 268K was being held for official purpose and/or as an exhibit knowing it to be untrue.
18. It is indisputable that the Plaintiff's motor vehicle was at all material times of the seizure, in good condition and it was being used by the Plaintiff until the Defendant confiscated and wasted it beyond use through the Defendant's acts complained of herein, a fact known to the Defendants.
19. The Defendant, its officers, employees and/or agents at all material times knew the fact that keeping the Plaintiff's motor vehicle in an open and uncovered dusty yard would ruin the Plaintiff's motor vehicle. In order to achieve this motive, the Defendant deliberately exposed the motor vehicle to the elements and vagaries of nature including rain, sun, dust, and storms among others including accelerated wastage and depreciation due to disuse, immobility, vandalism and other related perils.
20. The Defendant knew or ought to have known the value of the Plaintiff's motor vehicle to the Plaintiff as it was on the Plaintiff's use at the time of the seizure, and in its decision to continue confiscating, detaining and wasting the Plaintiff's motor vehicle through exposure to the elements, it is clear the motive of the Defendant was to unjustifiably and unfairly deprive the Plaintiff of the use of the motor vehicle to oppress him and subject him to hardship.
21. The Plaintiff's cause of action is based on the fact that when the Plaintiff visited the station to persuade the Defendant to release the motor vehicle, he was shocked and appalled by discovering that the Defendant had the vehicle had been wasted and damaged beyond its usefulness to him.
22. Considering the vehicle does not have window glass, the Defendants knew that by discarding the vehicle in an open dusty yard without any cover or protection, and exposing it for over six years to the elements of the weather and human intervention such as heat of the sun, dust, rain water and vandalism, would and has rendered the vehicle beyond use and repair.
23. The Defendant's motive and acts in deliberately and willfully withholding the Plaintiff's motor vehicle and refusing to release the same to him for over six years despite constant and repeated requests under the pretext that it was being held for official purpose, knowing it to be false, was in bad faith, malicious and made with intent to deprive the Plaintiff of the motor vehicle and its use.
24. The Plaintiff asserts that at the time of its seizure and detention, his motor vehicle registration number KAH 268K was in good and usable state, was in use and on the day the vehicle was seized by the Defendant was being used to go and pick up the Plaintiff.
25. The objective of the Defendant of confiscating and keeping the vehicle in an open yard was willful to expose the Plaintiff's vehicle to the vagaries of weather and which the Defendant has achieved in the last six years to completely destroy the usability of the Plaintiff's vehicle, rendering it of no value to the Plaintiff.
26. The Plaintiff's motor vehicle KAH 268K has never been involved or used to commit any crime. It was never been wanted by the police or any other law enforcement agency and it has no pending criminal proceedings in which it would be required for any Defendant's official use or exhibit. There is no Justifiable reason other than malice and impunity of the Defendant's acts for the continued detention



- of the car, which the Defendants has used to waste through exposure to elements such as sun, storms, dust, and rain among others to the extent that it has become of no value to the Plaintiff.
27. The Defendant has never had any report made to it by the Plaintiff or are there any criminal nature concerning the Plaintiff and/or Plaintiff's motor vehicle to warrant its confiscation, detention, seizure and wastage for over six years.
 28. The Defendant's deliberate and willful acts of detaining and wasting the Plaintiff's motor vehicle through disrepair, vandalism, and the vagaries of weather for over six years without lawful reason or duty were acts of depriving the Plaintiff his property thereby violating his constitutional right to property as guaranteed under article 40 of *the Constitution*.
 29. The Plaintiff invites the Honorable Court to take judicial notice of the status, class and comfort of a Range Rover series, and also of the fact that being a creature of comfort, its maintenance and state of repair is essential to its optimal performance.
 30. Further, the Plaintiff invites the Honorable Court to note that the Defendant has deliberately exposed his motor vehicle make Range Rover to sun, dust, rain, rust, disuse, disrepair and other vagaries of weather and human intervention including vandalism for a period of about seven years, rendering it not only unusable but of no status for which the Plaintiff bought the Range Rover.
 31. The Plaintiff invites the Court to take notice of the fact that the Defendant despite knowing that the Plaintiff is the owner of the motor vehicle has deliberately denied the Plaintiff the use and access to the motor vehicle.
 32. The Plaintiff asserts that the detention of his motor vehicle was intentional in order to waste and completely ruin the motor vehicle beyond usage based on the fact that it is in the public domain that in similar incidents where a vehicle has been shot at, the Defendant takes photographs of the vehicle and it is released promptly by the Defendants to its owner. For instance, he said that;
 - a. On or about 9th April, 2012, an official car belonging to the then Director of Public Prosecution was shot at in a similar fashion as the Plaintiff, but the Defendants did not seize or detain the same but only requested the vehicle to be taken to the CID for ballistic examination on specific day.
 - b. When the vehicle belonging to the then Senate Majority leader was allegedly shot at on or about 9th January, 2014, the Police did not detain the car nor expose it to wastage, sun, dust and other vagaries of weather but promptly released the motor vehicle.
 33. Based on the foregoing paragraph, it is beyond dispute that the acts of the Defendants towards the Plaintiff and his motor vehicle are discriminative and oppressive of the Plaintiff.
 34. The Plaintiff avers that at one time when he visited the CID Headquarters in an attempt to meet the Director of CID but in vain, he personally the cars belonging to Jacob Juma and Chris Msando both which are held as exhibit, well-covered and the covering material fastened with fastening material and parked on the left side while going towards the reception, to protect them from the vagaries and elements of the weather such as rain, and sun among others.
 35. The Defendant's discriminatory, oppressive and malicious treatment of the Plaintiff by the Defendant is emphasized by the Defendant's treatment of similarly placed persons.
 36. The Defendant's acts of confiscating and detaining the Plaintiff's motor vehicle, failure to release the vehicle to the Plaintiff despite numerous request while exposing it to wastage, disrepair, vandalism, and



- the vagaries of weather to an extent that it is now wholly wasted and of no value to the Plaintiff are oppressive, discriminatory and in violation of the Plaintiff's property rights.
37. The damage, loss and harm suffered by the Plaintiff as a result of the Defendants' deliberate acts of exposing the Plaintiff's vehicle, to sun, dust, rain, rust, disuse, disrepair and other vagaries of weather and human intervention including vandalism for over six years was calculated with a clear foreseeability of the results and the consequences.
 38. Even where the Defendants would claim to be holding the Plaintiff's under the law or a duty, such a duty had to be carried out in accordance with the law, without ill-will and with reasonable care.
 39. The Defendant's acts complained of by the Plaintiff are improper, disproportionate and impermissible conduct and constitute illegal and arbitrary deprivation of property and property rights of the Plaintiff without compensation.
 40. By reason of the Defendant's illegal, unlawful, unconstitutional, malicious and oppressive acts or negligence, the Plaintiff has suffered direct and proximate harm, loss, damage and injury by depriving the Plaintiff of his property and of its use, for which the Plaintiff holds the Defendants wholly liable and the Plaintiff entitled to the reliefs sought.
 41. The Defendants acts of seizing, detaining and wasting the Plaintiff's motor vehicle beyond use and without fair compensation is not only unjust, unfair, and unreasonable but is also a violation of the Plaintiffs property rights as protected under *the Constitution*.
 42. Despite the Plaintiffs' request for the Defendant to release the vehicle claiming it would not be released without further instructions from the Commissioner of Police who had personally visited the Police Station to inspect the motor vehicle.
 43. Despite repeated demands by the Plaintiff to the Defendant to release the motor vehicle to him in order to stop its wastage when it was still in a usable condition, the Defendants ignored the Plaintiff's demands and continued to deliberately and willfully refuse to release the motor vehicle or to protect it from the vagaries of weather and human intervention, and continued to expose the motor vehicle it to accelerated disrepair, wastage, vandalism and disuse in utter disregard of the Plaintiffs right to the ownership and use of the said motor vehicle make Range Rover.
 44. The defendants filed an amended defence dated 15/8/2022 denying the plaintiff's claim.
 45. During the hearing of the case, the plaintiff produced his witness statement as his evidence in chief. In the said written statement he stated that he is a law abiding citizen of the republic of Kenya, an older member of the society within the meaning of article 57 of *the constitution* of the republic of Kenya, and that he was the indisputable owner of the motor vehicle make Range Rover HSE registration number KAH 267K.
 46. He stated that sometime on the night of the 23rd June, 2011, at around 10.00pm or thereabouts, the defendant purporting to perform an official duty seized my motor vehicle make Range Rover HSE registration number KAH 268K together with the keys, gave it to tis driver, who drove the vehicle to the central police station, and having broken the driver door window glass, parked it in an open duty yard exposed to the vagaries of weather and human intervention.
 47. He further said that when he went to demand the return of the motor vehicle, he was told by the defendant's officers, employees and servants, that the vehicle was to remain detained there until further instruction from the commissioner of police. This surprised me as the vehicle was not an exhibit for any crime.



48. The plaintiff said he was aware from his own knowledge that when a motor vehicle is required as an exhibit for a crime committed, the defendant takes the photograph of the motor vehicle and it is then often released to the owner immediately and or without delay.
49. He said he was also aware that when such a vehicle is held as an exhibit, usually the defendant exercises duty of care by covering the motor vehicle to ensure that it is not wasted or damaged by the vagaries of weather or vandalized by human intervention.
50. The plaintiff further stated that he personally wrote many letters to the defendants requesting that his motor vehicle make Range Rover HSE registration number KAH 268K be returned to him, without any response or even acknowledgment note.
51. He said that this suit was necessitated by the fact that when he went to the police station to check on the condition of the vehicle and he was completely appalled to find that the vehicle had been wasted and damaged by rain water, dust and sunshine that the vehicle has been exposed to for over six years as well as vandalism, thereby wasting it to a state of disrepair, and in a state unfit for my use.
52. He said that it was not in dispute as it was a fact that when the police seized and confiscated his motor vehicle make Range Rover HSE registration number KAH 268K the driver was on his way to pick him up in the very same vehicle.
53. The plaintiff said he was aware that on 23rd June, 2011, at about 10.00 o'clock, when his driver was driving the said motor vehicle along City Hall way just past the Garden Square Restaurant, to pick him up, the vehicle was shot at by unknown persons in another car who immediately fled away.
54. He said he was not aware of any investigation or arrest by the defendants or its servants and agents concerning the shooting of the motor vehicle make Range Rover HSE registration number KAH 268K or any genuine reason for the detention and wastage of my motor vehicle by the defendant for over six years despite my repeated demands.
55. Further that the defendant's act complained of herein of seizing the vehicle, giving it to a police driver, breaking or causing the driver door window and parking it outside in an open yard without any protection, exposing it to vagaries of the weather and vandalism for over six years, are unjustifiable as it is not in the defendants' line of duty to engage in acts which were malicious and oppressive to him.
56. The plaintiff said he has a right to own property and use it at his will and the defendants have no right to confiscate his property or to deprive him of the use of the same, waste it beyond my use for a period of over six years without just or fair compensation.
57. Further that such deprivation of use and ownership of his motor vehicle without any compensation was unconstitutional and in violation of his rights to property and fair administrative action under articles 40 and 47 of *the constitution*.
58. The plaintiff said he is entitled to justice and fairness without any discrimination based on the fact that he can confirm that when he visited the CID headquarters, to seek audience with the now retired director of the directorate of criminal investigations and seek reasons for the detention and wastage of my motor vehicle, which meeting did not materialize, when walking towards the reception on my left landside, he saw Jacob Juma's car and Chris Msando's car which he was made to understand were held as exhibits, the vehicles were well-covered and fastened to prevent their wastage and deterioration by vagaries of nature and human intervention.
59. The plaintiff stated that the defendants had no reason for seizing and detaining his motor vehicle other than ill-will, spite and malice and were only intent on wasting it for ulterior motives.



60. The plaintiff called two witnesses in support of his case. PW1 John Ngugi Mbugua who was his driver who gave a similar account as that given by the plaintiff on how the plaintiff's motor vehicle was seized.
61. The plaintiff also called Daniel Muthuri Mbugua (PW2), a motor loss assessor as a witness and he produced a report by Dante Assessors prepared pursuant to a letter of request for the report dated 28/6/2018 from the plaintiff's Advocates.
62. The defendants called one witness (DW1), SGT Daniel Njuki who also produced his witness statement in which he stated that on 23/6/2011 at around 10.00 pm Police Officers while on patrol duties within the central Business district he heard some gunshots coming from the Holy Family Basilica direction and he was also informed of the gun shot sounds by the controller at the control room Nairobi area.
63. Upon checking where the shooting was coming from the officers discovered that a motor vehicle registration number KAH 268K had been shot at with two occupants who were in shock. The two informed the police officers that they were both the driver and the body guard of Hon Harum Mwau whom they were going to pick from the parliament building. As they were approaching garden square restaurant they heard gun shots from another motor vehicle which they did not see clearly as it sped off towards the intercontinental Hotel round about.
64. The scene was visited by senior police officers who then drove the subject motor vehicle to central police station. The incident was booked vide OB No. 122/23/6/2011 and an inquiry file number 5 of 2011 was opened as the investigation commenced. The following day the then police commissioner Mr Mathew Iteere inspected the subject motor vehicle and ordered that both the driver and the body guard be charged with giving false information.
65. However, in a letter dated 29/3/2018 the director of public prosecution stated that the proposed charges as directed by the police commissioner was untenable as in fact the vehicle had been shot at and there were various independent witnesses to the shooting. The DPP directed that the inquiry file be closed.
66. SGT Njuki recalled that the plaintiff wrote several letters requesting for the release of the subject motor vehicle and on 17/5/2018 the national police wrote the plaintiff a letter to avail himself and collect the same.
67. I have carefully considered the evidence adduced in this case together with the rival submissions by both parties. It is the duty of the plaintiff to prove his case and the standard required in civil cases is on a balance of probabilities.
68. The issues for determination in this case are on follows;
 - i. Whether a declaration should issue against the Defendants that the seizure and detention Plaintiff's motor vehicle Registration No. KAH 268K for a period of six years was illegal/ oppressive, high handed, prejudicial and a violation of the Plaintiff's right to property as protected under *the constitution* of Kenya.
 - ii. Whether the Defendants should compensate the plaintiff with special damages of Kshs.12,200,000 inclusive of loss of user for the motor vehicle and costs and interest from the date of filing the suit until payment in full.
 - iii. Whether the Plaintiff is entitled to general damages, exemplary damages and aggravated damages for the Defendant's oppressive and wanton act of seizing, detaining and refusing to release the said motor vehicle while exposing it to wastages, disrepair, vandalism and vagaries of weather beyond use or repair.



- iv. Whether the Plaintiff is entitled to the costs of the suit.
69. On the issue as to whether the Plaintiff is entitled to the declaration he is seeking, I find that there is undisputed evidence that the plaintiff's motor vehicle was initially detained for lawful purposes of carrying out investigations after it was shot at by unknown people while being driven by the plaintiff's driver(pw1).
70. However, there is evidence that the Police continued to arbitrarily detain the motor vehicle and that they refused to release it despite several demands for the release of the same by the plaintiff.
71. I find that there is undisputed evidence that Defendant's actions of taking away and unlawfully detaining the Plaintiff's motor vehicle registration No. KAH 268K for over six years and exposing it to the vagaries and elements of weather rendered it unusable to the Plaintiff, which acts of the Defendants are and were unjust, unlawful and done in bad faith.
72. The unlawful and illegal seizure, detention and wastage of the Plaintiff's motor vehicle from the 23rd and/or 24th of June, 2011 to date was done without the Plaintiff's authority, permission or consent and as such the Defendants' acts are thus unlawful, unconscionable, unreasonable and were done in extreme bad faith.
73. The Plaintiff's evidence was that the subject motor vehicle was not an exhibit and was not subject to any dispute on ownership.
74. The Plaintiff said that at the time of seizing his motor vehicle, the Driver's side door window was intact except for a bullet hole, but at the time of viewing the subject motor vehicle at the Police Station in the year 2018, the window had been shattered and it was in fact missing.
75. I find that the Defendants did not give any explanation for the detention of the motor vehicle.
76. There is also evidence that the plaintiff took steps to provide a car cover for protection of the motor vehicle but the cover was removed and the motor vehicle was exposed to wastage, damage and vandalism and vagaries of weather and further that it was converted into a store at the police yard.
77. The Defendant's defence that the motor vehicle was detained pursuant to Section 26 of the Criminal Procedure Code (CPC) does not hold because there was no criminal case the police were investigating with respect to the motor vehicle.
78. Section 26 of the Criminal Procedure Code (CPC) states as follows:

“ Power to detain and search aircraft, vessels, vehicles and persons

- (1) A police officer, or other person authorized in writing in that behalf by Inspector-General of the National Police Service, may stop, search and detain —
- a. any aircraft, vessel or vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found; or
 - b. any aircraft, vessel or vehicle which there is reason to suspect has been used or employed in the commission or to facilitate the commission of an offence under the provisions of Chapters XXVI, XXVIII and XXIX of the Penal Code (Cap. 63); or



- c. any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained.
- (2) No person shall be entitled to damages or compensation for loss or damage suffered by him in respect of the detention under this section of an aircraft, vessel or vehicle.
 - (3) For the purposes of this section, “aircraft”, “vessel” and “vehicle”, respectively, include everything contained in, being on or attached to an aircraft, vessel or vehicle, as the case may be, which, in the opinion of the court, forms part of the equipment of the aircraft, vessel or vehicle”.
79. The Defendants also submitted that that the Plaintiff ought to have moved to court to seek release of the motor vehicle. I find that there are correspondence showing that the Plaintiff was in constant communication with the police over release of the motor vehicle and that police stated that they were waiting for directions from the then commissioner of police and the Director of Public Prosecution (DPP).
 80. There is undisputed evidence that when the motor vehicle was finally released it had been subjected to wastage, vandalism and vagaries of weather.
 81. I find that the Plaintiff is entitled to the declarations he is seeking since the unwarranted acts by the Defendants amount to violation of his property rights.
 82. I find that the Police did not have a reason to detain his motor vehicle since it was not involved in commission of any crime as prescribed by Section 26 of the Criminal Procedure Code (CPC).
 83. On the issue as to whether the Plaintiff is entitled to compensation, I find that the answer is in the affirmative.
 84. The Plaintiff is seeking the value of the Motor Vehicle. He called an assessor (PW2) who produced a report on the valuation of the motor vehicle and gave estimates of loss of user.
 85. The Plaintiff is seeking Khs.8,400,000 in respect of the value of the motor vehicle, a Range Rover HSE and a further Khs.3,600,000 in respect of loss of user amounting to the special damages of Khs.12,200,000 which he is seeking in the plaint.
 86. The Defendants opposed the figure and submitted that the value of the motor vehicle has depreciated and further that the court should take judicial notice of the fact that the Plaintiff comes from the upper economic class in society and he had other vehicles to use.
 87. I find that the economic status of the Plaintiff is not an excuse for violation of his property rights. *The constitution* of Kenya protects both the rich and poor.
 88. I find that the Plaintiff is entitled to compensation for loss of the motor vehicle which the assessor valued at Khs.8,400,000.
 89. However, I find that loss of user has not been proved by production of receipts and the same is not payable. The claim for loss of user of Kshs.3,600,000 must therefore fail.
 90. On the issue as to whether the Plaintiff is entitled to general damages and aggravated damages for the defendant’s oppressive acts, I agree with the Defendants that the Plaintiff ought to have moved to court



earlier to secure release of his motor vehicle and I therefore I find that he is not entitled to exemplary damages.

91. I also find that the said damages are payable when the other damages are not adequate or when it is necessary to punish officers of the state for oppressive acts.

92. I rely on the case of Michael Rubia v Attorney-General [2020] eKLR where the court stated as follows;

“I need not cite any other authority to show that the general trend in this jurisdiction is to avoid award of exemplary or punitive damages in public law claims. This principle is grounded on two reasons namely that the State has improved in its respect of human rights and that the taxpayer should not be burdened with heavy awards in claims touching on the public purse”.

93. In the circumstances of this case I find that although this is not a public litigation claim, the same touches on the public purse. I also find that the compensation awarded to the plaintiff in respect of the value of the motor vehicle is sufficient.

94. On the issue of the costs of the suit and interest, the plaintiff is seeking compound interest. However, I find that the Plaintiff is entitled to costs and interest at Court rates.

95. The Plaintiff is awarded the following remedies;

- i. A declaration be and is hereby issued in terms of prayers 1 to 3 of the amended plaint dated 20/2/2019.
- ii. The Defendants are ordered to pay the Plaintiff compensation of the value of his motor vehicle Registration No. KAH 268K Make: Range Rover HSE.
- iii. The Defendants are also ordered to pay the Plaintiff the costs of this suit and interest at court rates from the date of filing suit until payment in full.
- iv. Judgment be and is hereby entered in favor of the Plaintiff against the Defendants in the sum of Ksh.8,400,000 plus costs of this suit and interest at court rates from the date of filing this suit until payment in full.

Orders to issue accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF AUGUST, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

.....for the Plaintiff

.....for the 1st Defendant

.....for the 2nd Defendant

