



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E 423 OF 2021**

**IN THE MATTER OF CRIMINAL PROCEDURE CODE**

**IN THE MATTER OF APPLICATION FOR (DIRECTIONS IN THE NATURE OF HABEAS CORPUS**

**AND**

**IN THE MATTER OF CRIMINAL PROCEDURE (DIRECTIONS IN THE NATURE OF HABEAS CORPUS RULES) AND  
ALL ENABLING PROVISIONS OF THE LAW.**

**IN RESPECT OF**

**SAMSON GEBREIGZI TEKLEMICHAEL.....APPLICANT**

**DIRECTIONS OF THE COURT**

1. The applicant moved the court vide a chamber summons application dated; 22<sup>nd</sup> November, 2021, pursuant to the provisions of; section 389(2) and Rule (2) and (3) of the Criminal Procedure (Directions in the Nature of Habeas Corpus Rules), read with Article 25 of the Constitution of Kenya, 2010.
2. The applicant is seeking for orders as here below reproduced:
  - a) *That, this Court do order the Inspector General of Police in whose custody is SAMSON GEBREIGZI TEKLEMICHAEL, to produce the body of the said SAMSON GEBREIGZI TEKLEMICHAEL and not to remove or allow removal out of the Courts Jurisdiction.*
  - b) *That, the said SAMSON GEBREIGZI TEKLEMICHAEL be forthwith released and set at liberty.*
3. The application is supported by the affidavit of the even date sworn by; Milen Halefoam Mezgebo, the applicant's wife. She avers in a nutshell that, she received a call from her husband on 19<sup>th</sup> November, 2021 at 1730 hours, informing her that, he was being taken from out of his car, along Loitotok road roundabout in Likoni road, by unknown people.
4. That, she rushed to the scene and found her husband's motor vehicle abandoned there. Upon inquiry, she learnt from the police officers manning traffic at the scene that, her husband had been taken away by police officers to unknown destination. She also learnt from the bystanders that, the traffic officers at the scene had assisted in the arrest of her husband.
5. She then went and made a report of the incident at; Kilimani Police Station and the matter was taken over by the Directorate of Criminal Investigation. Subsequently with the assistance of friends and relatives they visited all Police Stations within the proximity of; Nairobi County, without trace of her husband. Further, efforts to establish from the Police Officers, the where about of the husband has not borne any fruits and neither has any information been offered at all. Therefore, she is fearful and apprehensive that, her husband's life may be in danger and believes that, it has been orchestrated by state officers.
6. The matter was placed before the court on; 23<sup>rd</sup> November, 2021 wherein, the court ordered that, the application be served for directions and stood it over to 25<sup>th</sup> November, 2021. Upon appearance of the parties, the Respondent was given up to; 29<sup>th</sup> November, 2021 to file a response to the application. The Respondent filed a status report indicating that, investigations in the matter was on going and requested for more time, which was granted and the matter stood over to; 3<sup>rd</sup> December, 2021.
7. On 3<sup>rd</sup> December, 2021, the court was informed that, the Respondent had filed a replying affidavit sworn by; one No. 235582, I.P Hezron Kimutai attached to Kilimani DCI office. The deponent confirmed receipt of a report, vide OB No. 50/19/11/2021 by; by one Milen Haleton, of her missing husband. That investigations commenced with recording of her statement immediately. Further, call data received from

Safaricom Limited, indicated that, the victims phone was switched off at Ngara Bus Park at, 1757 hours.

8. Furthermore, the information from; Integrated Communication and Command Centre (IC-3) as seen vide CCTV footage and trajectory movement of victim's motor vehicle showed that, the motor vehicle was not captured by CCTV. That, NTSA records indicate that, the motor vehicle used by the the kidnappers to transport the victim, was a lorry/truck Hino, white in colour and is owned by; Jacob Wandera and Kenya Commercial Bank Ltd. Upon tracing Jacob, he indicated the subject motor vehicle is held up at, Mumias Police Station vide, OB No. 17/08/06/2018, for the last three (3) years; over a traffic offence and assault of a Police officer.

9. Further, the officer manning traffic at the scene could not capture the registration number of the kidnapper's motor vehicle, as there were many people at the scene. Finally, the investigating officers have made several efforts to contact Milen, the applicant's wife to avail her husband's passport but without success. However, the allegation of failure to hand over the applicant's passport was denied by the applicant's defence counsel, who cast doubt on the sincerity of investigations and submitted that, the investigating officer was not candid and honest in the investigation.

10. Upon hearing both parties, the court observed and held that: -

*a) There is no evidence so far that, the applicant is being held by the Police.*

*b) It is in the interest of justice that, the ongoing investigations be continued and concluded to, establish the where about of the victim applicant.*

*c) In view of the fact that, there are allegations and suspicion that, the officer who was on traffic duties and assisted kidnappers is stationed at; Kilimani Police Station and the investigations are being conducted at the DCI Office at Kilimani, hence perception of lack of objective investigation, I direct that, the matter be referred to, DCI Headquarters for further investigations.*

*d) That the results of the investigation be availed in court within seven (7) days of the date of this order.*

*e) Any party with any information including of the repartee, should avail it to the investigators.*

11. Upon referral of the matter to, DCI Headquarters, one Mr. Titi Agera attached to Legal affairs at the Inspector General's office attended court on; 15<sup>th</sup> December, 2021 and sought for two (2) weeks to deal with the matter. He was granted time to; 29<sup>th</sup> December, 2021. On 29<sup>th</sup> December, 2021, one Mr. Omunga from the National Police Service, informed the court that, the investigation file had been received at, DCI Headquarters and a new team of investigators assigned the matter. The matter was stood over to 12<sup>th</sup> January, 2022.

12. The matter has been mentioned twice thereafter without the DCI Headquarters and/or Legal department of Inspector General's office availing the final investigation report. It is therefore clear to the court that, there is no progress in this matter and/or the matter is getting nowhere under the investigation of the DCI Headquarters.

13. Indeed, the matter has been in court for the last three (3) months without any substantive progress on the key issue as to the where about of the applicant. This is not the kind of a matter where the parties can enjoy the luxury of time. It is against this background that; I order as follows: -

*a) The DCI Headquarters, do avail its final report to the court within two (2) weeks of the date of this order to enable final orders herein.*

*b) In view of the fact that, the applicant has lost faith in the investigations by the Police, I direct that an inquiry file be opened and the matter be subjected to judicial inquiry whereby, the court can become an independent arbiter, in establishing the where about of the victim and/or commission of any offence and recommend the necessary action. This should be done forthwith.*

*c) The matter will be mentioned on 28<sup>th</sup> February, 2022 for final orders.*

14. It is so ordered

**DATED, DELIVERED AND SIGNED ON; THIS 28TH DAY OF JANUARY 2022**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of;

Mr. Ombeta and Mr. Kangáhi for the Applicant

Ms chege for the Republic

Edwin: Court Assistant.