



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 10 OF 2020

REPUBLIC.....DPP

VERSUS

LUCY WAITHERA NJUGUNA.....1ST ACCUSED

JOHN HARI GAKINYA.....2ND ACCUSED

RULING

The applicant **JOHN HARI GAKINYA**, filed an application herein dated 18.8.2020 on 1.2.2020. The application has 2 substantive prayers as follows:-

i. THAT pending the hearing and determination of this case, the Honourable court be pleased to direct the investigating officer to release the motor vehicle KBP 298E, Prado to the applicant.

ii. THAT this court be pleased to direct the accused/applicant to produce the motor vehicle to court whenever required and to maintain a comprehensive cover for the said motor vehicle.

Attached to the application is an affidavit of the applicant sworn on 18.8.2020.

It was submitted by Mr. Wandungi for the applicant that the motor vehicle was seized and detained after the arrest of the applicant on 10.3.2020. That the same is getting wasted and is in danger of depreciation and vandalism. That the vehicle was on the hands of the applicant by written agreement and in lieu of fees. The applicant is the executor of the will of the deceased.

It was proposed that the investigating officer do take photos of the same before it is released. The court was also informed that the High Court at Nakuru (Matheka J.) had given the investigating officer. 21 days to complete investigations and release the vehicle, which days have long lapsed.

Counsel relied on **Joseph Kingori and Kenneth Mwangi Versus OCS. Igembe South and ODPP (2020)eKLR** and **Republic Versus John Ng'ang'a Mbugua (2014)eKLR**.

Mr. Okach for the state, opposed the application. That the DCI always take care of property under his care and the state has a duty to protect the property of the deceased. Counsel added that the said documents have been put into question as having been fraudulently obtained. It was submitted that releasing the vehicle would be tantamount to perpetuation of criminality.

I have considered the 2 rival submissions. From the onset, it is clear that the case before this court is one of a charge of murder contrary 203 as read with section 204 of the Penal Code. from the submissions made by the parties, the motor vehicle KBP 298E, subject of this application, was seized from the applicant upon his arrest. Same has since remained lying with the investigating officers.

This court has further been informed of an existing succession cause regarding the estate of the deceased at the High Court in Nakuru in which this particular motor vehicle has been under particular motor vehicle has been under investigations as being associated with the deceased's estate. To this end, I have considered the ordered issued by the Hon. Lady Justice Mumbua T. Matheka, in **Nakuru High court, Succession cause No. 40/2019**, issued on 16.1.2020. At paragraph 3, the Director of Criminal Investigations is ordered to detail the said motor vehicle only for 21 days.

It is therefore clear that matters to do with whether the said motor vehicle is part of the deceased's estate could very well fall under the issues

for determination in the succession cause pending before the High.

It is possible that the same vehicle may also be an exhibit to be used by the prosecution side. Thus, it is necessary that the same be held and preserved in a manner that would not jeopardize the case of the prosecution.

At the same time, the interests of the applicant over the same ought to be safeguarded even as this case progresses.

The issue is therefore whether it would be prudent to release the said vehicle as urged by the applicant. In the case cited by the applicant of **Joseph King'ori Mikamiti and Another Versus DCI, Igembe South and DPP (2020)eKLR**, the Honourable Justice f. Gikonyo, reacting to the same question, held;

“It is now gaining notoriety and favour from the courts, to release a motor vehicle which is intended to be an exhibit to the owner but on specified conditions which ensures that the exhibit is preserved for use in the trial whilst the owner uses the vehicle.

The Honourable Judge went on that one of the conditions for such release would be that it be presented to court whenever it is required in court, and that this would help avert the wastage away of the vehicle in police stations.

In **Republic Versus John Ng'ang'a Mbugua (2014)eKLR**, the Honourable Muchemi J. also similarly held:

“It is the practice in Criminal cases that photographs be taken which would be produced in evidence during the hearing If the vehicle is released after its photographs are taken, no miscarriage of justice will be occasioned during the trial.”

I associate myself with the 2 decisions. I am in the circumstances convinced that in the interests of justice, it would be proper to allow the application of the applicant but on appropriate conditions. I therefore allow the application dated 18.8.2020, on the followings terms:-

i. THAT the investigating officer, herein represented by the respondent, do take photographs of the Motor vehicle registration Number KBP 298E, Prado within 14 days from the date hereof.

ii. THAT upon compliance with order (i) above, the motor vehicle registration number KBP 298E, Prado to be released to the applicant.

iii. The applicant is ordered never to sell and or dispose of the said motor vehicle or in any way part with its ownership or possession till determination of this case or an order of this court.

iv. The applicant to physically produce the motor vehicle registration number KBP 298E, Prado in court whenever required by this court.

D. O. OGEMBO

JUDGE

22.6.2021.

Court:

Ruling read out in open court in the presence of Mr. Wandungi for applicant and Ms. Maina for the state (on-line)

D. O. OGEMBO

JUDGE

22.6.2021.

Ms. Maina:

This case does not have a hearing date.

Court:

Matter to be fixed for mention for fixing of a hearing date. Accused 1 and advocate for accused 1 to be served to attend. Mention 30.6.2021.

D. O. OGEMBO

JUDGE

22.6.2021.