



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. E146 OF 2021**

**REPUBLIC.....APPLICANT**

**VERSUS**

**ERASTUS MAINA KAGECHA.....RESPONDENT**

**R U L I N G**

1. The state/DPP vide letter dated 18<sup>th</sup> June 2021 applied that Mombasa Chief Magistrates court Misc. CR. Application No. E076 OF 2020 be placed before this court for revision of Orders made on 8<sup>th</sup> April 2021 releasing motor vehicles Registration KAX 661W and KAV 165H Nissan matatus to Erastus Maina Kagecha the Respondent herein as beneficial owner.

2. The applicant want the said order revised for reasons that the same contravened Section 8 of the Traffic Act as the Respondent didn't have any records proving he was the owner of the subject motor vehicles. It was also argued that the trial Magistrate overstepped his mandate in granting the orders and failing to take into account the objection raised considering the drivers of the said motor vehicles were facing traffic charges in relation to the 2 vehicles and that they had absconded and warrants of arrest were inforce against them. The application was duly served but there was no response.

3. I have perused the trial courts file and find that indeed the application for release of the motor vehicles ought to have been made in the traffic cases where the drivers were charged.

4. Secondly, I do find that Respondent ought to have shown by way of agreement for sale or otherwise how he was a beneficial owner of the 2 motor vehicles. Mere word of mouth where it was suspected that vehicle was registered in the names of 3<sup>rd</sup> parties was insufficient. The trial Magistrate ought to have taken initiative to establish particulars of the vehicle even where he thought documents presented were questionable.

5. Releasing the motor vehicles to a party who had no documentary proof of ownership was an illegality and on the account the trial Magistrates order is hereby revised. The applicants are however given limited period of time to establish/investigate ownership or otherwise of the said two vehicles and make a report to court and/or release the 2 motor vehicles to the rightful owner or take appropriate action.

6. Mention on 27/09/2021 for No. 236933, IP Francis Mwangi to file report.

**Dated, signed and delivered in Open Court /online through MS TEAMS, this 29<sup>th</sup> day of July, 2021**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:-**

*Ogwel – Court assistant*

*Ms. Karanja for Applicant*

*Ms. Omondi Waweru & Co. Advocate for Respondent – No appearance*

*Hon. Lady Justice A. Ong'injo*

*Judge*