



**REPUBLIC OF KENYA**

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

**PETITION NO. 1 OF 2020**

**VINCENT ONYANGO OCHOLA.....PETITIONER**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**

**BASE COMMANDER, MUMIAS POLICE STATION.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petition herein, dated 6<sup>th</sup> January 2020, was brought by Vincent Onyango Ochola, to be known hereafter as the petitioner. The petitioner claims to be the beneficial owner of a motor vehicle KAZ 881W (Engine No. 3S-7380824 Chassis No. ST210-0051841), while the 2<sup>nd</sup> respondent is the Director of Public Prosecutions, and the 3<sup>rd</sup> respondent is the in charge of traffic affairs at the Mumias Police Station.
2. The factual background to the matter is set out in the petition in the body of the petition. The police impounded the subject motor vehicle on 3<sup>rd</sup> January 2020, on allegations of lack of valid insurance. He avers that the insurance had expired on 2<sup>nd</sup> January 2020, and that he was on his way to have it renewed when the motor vehicle was impounded. He seeks that the vehicle and other items that were inside it be released to him and that he be paid compensation for its detention.
3. The petitioner does not set out the legal and constitutional foundations of the petition, but he contends that his fundamental rights were contravened, as the vehicle was impounded, together with its contents, without any basis or lawful procedure.
4. In an affidavit sworn on 6<sup>th</sup> January 2020, in support of the petition, the petitioner avers to have had bought the vehicle, vide a sale agreement dated 4<sup>th</sup> December 2019, for a consideration, asserting that the sale agreement between him and the seller of the vehicle was legal. He states that no justifiable reason was given to him by the 3<sup>rd</sup> respondent as to why his vehicle was impounded, and asserts that if he had done anything wrong, then he ought out to have been charged in a court of law with some offence. He states that the petition is intended to secure for him his constitutional and fundamental rights touching on the legality and constitutionality of the detention of the said motor vehicle and personal items. He has attached to that affidavit, copy of a sale agreement dated 4<sup>th</sup> December 2019, between him and a Hannah Wacuka Gichoya, and a certificate of registration of the motor vehicle dated 21<sup>st</sup> December 2011, depicting the said Hannah Wacuka Gichoya as owner.
5. The petitioner filed a Motion, dated 6<sup>th</sup> January 2020, contemporaneously with the petition, seeking, in the main, release of the motor vehicle to him and orders to restrain the respondents from detaining or preferring charges against him arising from the said impounding of the motor vehicle.
6. The petitioner swore a further affidavit, on 13<sup>th</sup> January 2020, to state that a police officer from Mumias Police Station had texted him, soliciting a bribe from him, and threatening to have the motor vehicle auctioned. He also avers that he, the petitioner, sent an advocate to the police station, with instructions that the motor vehicle be released to him, but the police declined. He also avers that his personal items had been retrieved from the motor vehicle.
7. In reply to the petition, the 3<sup>rd</sup> respondent swore an affidavit on 13<sup>th</sup> January 2020. She confirms that the subject motor vehicle was stopped on 3<sup>rd</sup> January 2020, and found to have had an invalid certificate of insurance. It was driven to the Mumias Police Station, and the driver released, with instructions to obtain a valid certificate of insurance before collecting the motor vehicle. The driver was not the owner of the vehicle, and so he was instructed to inform the petitioner to go the station and answer to charges of permitting uninsured motor vehicle to be on the road contrary to section 4(1)(2) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405, Laws of Kenya. She avers that upon inspection, the personal items that the petitioner has alluded to in his petition were not found in the vehicle. The driver did not turn up thereafter, whereupon the 3<sup>rd</sup> respondent decided to involve the Directorate of Criminal Investigations. The motor vehicle was subsequently

booked as OB: 26/3/1/2020, pending the owner producing ownership documents for verification. Investigations were conducted, which indicated previous owner to be Hannah Wacuka Gichoya, who had sold the vehicle to Omingo Jared Zachary, who in turn sold the same to Francis Odhiambo Onyango. It is averred that the vehicle was not in the National Transport and Safety Authority records, and the 3<sup>rd</sup> respondent suspected that the same had been obtained unlawfully by the petitioner. It is averred that the petitioner had been invited to visit the Mumias Police Station to assist with investigations, but he instead decided to file the instant cause. It is averred that the police ought to be given time to establish the origin of the motor vehicle, for its real owner was one Francis Odhiambo Onyango of Kwale County.

8. There is another affidavit on record, sworn on 15<sup>th</sup> January 2020, by Corporal Joseph Ngunjiri. He avers to be the officer mandated by the 3<sup>rd</sup> respondent to investigate ownership of the subject vehicle. The need for investigations, according to him, arose from the fact that the person who was driving the subject vehicle at the time it was impounded, failed to bring a valid certificate of insurance before collecting the vehicle. An advocate showed up at the police station to pick up the vehicle, but was advised to bring the owner of the vehicle to vail ownership documents for verification. The advocate availed a number of the alleged owner, the petitioner herein, who, despite being asked to avail documents, did not turn up at the police station, instead he filed the instant petition.

9. Directions were given on 16<sup>th</sup> January 2020, for disposal of the matter by way of written submissions. The record before me indicates that the only written submissions on record were filed by the 1<sup>st</sup> respondent, dated 29<sup>th</sup> January 2020. The same turns on the question of investigations. It is submitted that the petitioner was not the registered or beneficial owner of the subject motor vehicle, for the sale agreement that he had exhibited, dated 14<sup>th</sup> December 2019, showed that at the time he was alleging to have bought the vehicle, the same had been sold by the registered owner to Jared Zachary and Francis Odhiambo, who held the valid from National Transport and Safety Authority, and the original registered owner, Hannah Wacuka Gichoya, had no vehicle which he could pass to the petitioner on the date alleged. It is submitted that there were elements of criminality on the ownership of the motor vehicle that needed to be investigated to finality. It is further submitted that at the time of the impounding of the motor vehicle, the same did not have a valid certificate of insurance. After the driver was arrested he was given time out to renew the same, but it would appear that he never did.

10. It is not contested that at the time the motor vehicle was impounded, there was no valid insurance against third party risks. The driver or the petitioner was given time to renew the insurance to facilitate release of the motor vehicle to him, but it would appear that the driver or the petitioner did not renew the insurance cover, and did not go back to the police station to retrieve his vehicle. The failure to comply as directed appears to have raised suspicions, which eventually led to the investigations being widened beyond the matter of the insurance.

11. I have noted from the record that the petitioner has not adverted on the issue as to whether he caused the insurance to be renewed, as that was the principal reason the vehicle was impounded in the first place. He could only complain thereafter after he had complied, and the respondents had failed to release the motor vehicle to him after compliance. The respondents appear to say that the person who had the vehicle on 3<sup>rd</sup> January 2020 was not the petitioner, but a driver. The petitioner does not appear to have, himself, ever gone to the police station to clear the issues with the police. He has not filed any documents to clarify whether the vehicle was impounded from him, or from his agent or driver, and as to whether he did take any steps towards getting insurance cover, so as to have the motor vehicle released to him.

12. Secondly, on the issue of ownership, proof of ownership of a motor vehicle is the fact its registration in the name of someone. The legal owner is the person whose name appears in the registration documents. There is room for beneficial ownership by persons who are in the middle of sale of the same, before transfer is effected. Use of motor vehicles on the road raises so many issues, which should be of interest to the police. First and foremost is the question of safety, and it is here that insurance is critical, so that use of motor vehicles on the road should not pose a danger to society, and where injuries are caused, there ought to be guarantee that the person controlling the vehicle would be in a position to compensate the victims. Secondly, is the issue of security. Motor vehicles can be used for commission of crimes, as getaways or conduits of contraband, among others. It is critical that a particular motor vehicle to be traceable to a particular person, in terms of ownership, for accountability purposes. Where ownership appears to be shrouded in uncertainty, the police would, no doubt, be interested, and that appears to be what happened here. It is the duty of the police, under the Constitution, to carry out enquiries relating to the issues that I have mentioned above, and it is the duty of citizens to cooperate with them. It behooved the petitioner to have done just that. He, however, appears to have stayed away from the police, and to be keen on using the court process to shield himself from scrutiny, instead of doing duty by cooperating with the police.

13. In view of what I have said herein above, I find no merit whatsoever in the petition before me. Let the petitioner work with the police to secure safety on the road for motor-vehicle users, and as well to secure national security, by establishing that the vehicles plying Kenyan roads are in the hands of the persons who ought to have them. The petition is accordingly dismissed. Each party shall bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF OCTOBER 2021**

**W MUSYOKA**

**JUDGE**