



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL MISCELLANEOUS APPLICATION CASE E261 OF 2021

JAMES KARIUKI NYAGA.....APPLICANT

VERSUS

NATIONAL AUTHORITY & SAFETY AUTHORITY (NTSA).....1ST RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

AND

DIAMOND TRUST BANK KENYA LIMITED..... INTERESTED PARTY

RULING

This is for the application of the applicant **JAMES KARIUKI NYAGA**, dated 30.7.2021. The application seeks several orders, that;

1. **THAT** this Honorable court be pleased to issue an interim order directed to the 1st Respondent compelling them to unconditionally release the applicant's motor vehicle **AVIA ASHOK TRUCK**, registration number **KBV 200W**, which is currently being held at Nairobi Area Police Station pending the hearing and determination of this application.
2. **THAT** this Honourable court be pleased to declare that the conduct of the 1st Respondent in instructing police officers from Kamukunji police station to seize and detain the subject motor vehicle was punitive, wrongful, unlawful and a violation of the Applicant's Constitutional right to enjoyment of private property.
3. **THAT** the loss and or costs occasioned by the seizure and detention of the motor vehicle be met by the respondents and the applicant be compensated for the same by the Respondents.
4. **THAT** this Honourable court be pleased to make such other order as will guarantee the applicant's right to the subject motor vehicle or as may meet the ends of justice.

The application is supported by the Affidavit of the applicant. It is opposed by both the Respondents and the interested Party, Diamond Trust Bank Kenya Limited. The parties agreed to canvass this application by way of written submissions. Only the applicant and the Interested Party filed submissions. The DPP, on the other hand, held that they had no interest on the matter.

From the Affidavit filed in support of the application, the applicant has deponed to the facts that the said motor vehicle belongs to him having bought the same and that same has been unlawfully confiscated and detained. He relied on the case of **Republic Versus Inspector General of Police ex parte Kennedy Ngeru Irungu (2016)eKLR**, where it was held that:

“For the police to justify the impounding and or detaining of the subject motor vehicle, they must demonstrate that they had received and booked a report of the loss of the said motor vehicle and that they had been making efforts to track it without success.”

That in this case, there is no evidence that the police were contemplating bringing any criminal charges against the applicant.

The applicant also relied on **Republic Versus Commissioner of police of Kenya and the DCI ex parte John Bundi Ngala (2006)eKLR**, in which the court held;

“I have seen annexure “JBNB”, a police abstract and it is indicated that it was detained “pending resolution of dispute of ownership.” If that be the reason, then it is a lawful reason as to my knowledge the criminal investigation department is not the body to resolve disputes as to ownership of motor vehicle. It is civil courts that ought to resolve disputes such as this one. It has not been said that the said department qualifies to be a civil court.”

The 2nd Respondent, even though did not file submissions, filed a replying affidavit in which it was deponed that the confiscation and detention of the said motor vehicle followed a complaint by the interested party against Kipsigis Stores Limited who has a hire purchase loan with the Interested Party for the said motor vehicle. That the DCI has commenced investigations into how the said Kipsigis Stores Limited could have transferred the vehicle to the applicant without the knowledge of the interested party.

The applicant filed a further affidavit in which it was now deponed that he bought the motor vehicle from Kipsigis Stores Limited and that indeed there is a pending Civil case between the parties, Milimani Chief Magistrate’s Court Civil Case Number E729 of 2021.

The Interested party in both the replying affidavit and the submissions have maintained that it had extended a hire purchase facility to Kipsigis stores Limited for purchase of this motor vehicle amongst others, but that the borrower failed to repay the loan. That upon the instructions of the bank. The motor vehicle was repossessed, only for the bank to realize that the motor vehicle had been sold to the applicant.

I have considered the submissions and the positions taken by the 3 parties in this dispute. It is noted that the applicant first came to this court seeking orders that his motor vehicle registration Number KBV 200W, unlawfully confiscated and detained at Nairobi Area Police Station, be released to him. The applicant further prayed for damages. The Respondents, while admitting to having confiscated the said motor vehicle, pleaded that it had acted on instructions from the Interested Party Bank, acting on its rights to reposes following default in repayment of a hire purchase loan.

The court has further noted that it was not until the response of the Respondents came up that the applicant owned up to confess that the parties had infact been going through Civil litigation revolving around the hire purchase, default, sale, repossessing, amongst other issues. There is no evidence that the said Civil Proceedings have been determined.

The question to ask is why the applicant chose to file this cause before the criminal division knowing well that there are civil proceedings before the Civil Division between the same parties over the same subject matter. To me this is a clear case of abuse of the process of this court. No wonder even the Respondent (2nd Respondent) has declared no interest in this matter.

Without saying much or delving into the specific orders, including those of Civil nature, prayed for in this application, I find this application lacking in any merit. This application dated 30.7.2021 is accordingly dismissed wholly. Orders accordingly.

D. O. OGEMBO

JUDGE

20.12.2021.

Court:

Ruling read out in court (on-line) in presence of Mr. Wachira for applicant and Ms. Akunja for the DPP, and Ms. Wangui for Mr. Kisinga for the Interested party.

D. O. OGEMBO

JUDGE

20.12.2021.