



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. APPLICATION NO. 35 OF 2019

PAUL KIMANI CHEGE.....APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE,

THRO'THE OFFICER COMMANDING

POLICE STATION (OCS) KISUMU

CENTRAL POLICE STATION.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC

PROSECUTIONS THRO'

THE OFFICE OF THE DIRECTOR OF

PUBLIC PROSECUTIONS KISUMU COUNTY.....2ND RESPONDENT

RULING

The application before me is for the release of a motor vehicle, Registration Number **KBK 053G**, to the Applicant.

1. The said vehicle was said to be at the Central Police Station, Kisumu, where it was being held, because it was the subject matter of a criminal case which is currently pending before the Chief Magistrate's Court, Kisumu.
2. The Applicant described himself as the beneficial owner of that vehicle, explaining that he used to have it operate as a matatu.
3. The Applicant told this court that he had purchased the vehicle, using a loan from the **KIGUMO TRAVELLERS SACCO**.
4. Since the vehicle was taken off the road, and was being held by the police, the Applicant said that he was now incurring irreparable losses.
5. He pointed out that he was not an accused person in **Kisumu Chief Magistrate's Criminal Case No. 94 of 2019**, wherein the vehicle was the subject matter.
6. He offered to meet any terms and conditions as the court may impose, when releasing the vehicle to him.
7. The Applicant expressly stated that he was ready and willing to give his undertaking to make available the vehicle when the court or the police would need to have it provided.
8. The Applicant relied on his affidavit which was sworn on 6th September 2019, and produced a Sale Agreement dated 13th November 2018. In the said Agreement, it is shown that the Applicant, **PAUL KIMANI CHEGE** had purchased the vehicle in issue from **MOSES MUYA MUCHUI**, for the sum of Kshs 650,000/=.

9. The Applicant exhibited a Sale Agreement dated 26th October 2018, showing that **MOSES MUYA MUCHUI** had purchased the vehicle from **IBRAHIM MUHO MBUGUA**, for the price of Kshs 350,000/=.
10. The Applicant informed this court that he had made efforts to negotiate with the police, to have the vehicle released to him. However, the police, reportedly, told the Applicant that the matter ought to be resolved amicably.
11. However, the Applicant's attempts to find an amicable resolution to the issue have not been successful.
12. In the meantime, the Applicant was apprehensive that unless this court intervened and asked the police to release the vehicle to him, immediately, the Applicant stands to suffer irreparable damages.
13. In answer to the application, the Respondent submitted that the Applicant was not the bona fide owner of the vehicle in issue.
14. The Respondent told the court that the vehicle has more than one log book.
15. It was asserted that the original owner of the vehicle was **AMBROSE ONYANGO**, from whom it was stolen in the year 2012.
16. The Respondent confirmed that the vehicle was in the Applicant's possession, when it was recovered.
17. The Applicant demonstrated to the law enforcement agents that he had bought the vehicle from **MOSES MUHA MUCHAI**.
18. When the said Moses Muha Muchai was contacted, he showed that he had bought the vehicle from **IBRAHIM MBUGUA**.
19. It was the said Ibrahim Mbugua who had led the police to **BENJAMIN KIBET KIPRONO**, who is the accused in the **Criminal Case No. 35 of 2019**.
20. As far as the Respondent was concerned, the release of the vehicle to either the Applicant or to any other person, would be prejudicial to the bona fide owner.
21. The Respondent invited this court to take into account the claims by the other persons.
22. In a Reply to the Respondent's submissions, the Applicant reasoned that although the Respondents contend that the vehicle had been stolen, that was still an allegation until the state adduced evidence to prove it.
23. According to the Applicant, the assertions by the Respondents were nothing more than allegations.
24. In law, a log book provides proof of ownership of a motor vehicle. However, pursuant to **Section 8 of the Traffic Act**;
- "The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle."***
25. In effect, the fact that the Applicant has a log book in which he is shown as the registered owner of the vehicle, is not necessarily irrefutable or irrefutable proof of ownership.
26. In this case, the Respondent has said that there are more than one log book, for the same vehicle. It is therefore possible that the Respondent will be able to provide evidence to prove their assertion, that the legitimate owner of the vehicle is **AMBROSE ONYANGO**.
27. The criminal case currently pending before the Chief Magistrate's Court provides the forum at which the Respondents herein intend to produce evidence to prove that the accused, **BENJAMIN KIBET KIPRONO**, stole the vehicle from its lawful owner.
28. In order for the trial court to determine the guilt of the accused, the prosecution would have had to prove the case beyond any reasonable doubt.
29. And if it is proved that the accused stole the vehicle, it would follow that any persons to whom the vehicle was sold thereafter, could not have acquired a legitimate title.
30. If this court were to make orders that could have an impact on the criminal case which is still pending at the Chief Magistrate's Court, that could be prejudicial to one or more of the persons who have an interest in the vehicle in issue.
31. The trial court has the requisite jurisdiction to determine whether or not to release the vehicle; and who to have it release to; and the stage in the proceedings when it would be most appropriate to have it released.
32. I hold the considered view that when a case was ongoing before a trial court, any other court should be very cautious before giving orders that relate to items which were either the subject matter of the case or items which were intended to be used as exhibits at the said criminal case.
33. For instance, when there is a case involving Forest Produce, such as sandalwood, the High Court ought to be extremely cautious when

called upon to release the vehicle which was transporting the said produce. It should be borne in mind that if the person who was charged in relation to the sandalwood was convicted, the trial court is required to determine whether or not the vehicle that was ferrying the sandalwood should be forfeited to the state.

34. If the High Court were to order the release of the vehicle to the registered owner, because he was not the accused, such an order may be a serious hindrance to the learned trial magistrate when determining the orders to make in relation to the vehicle.

35. Bearing in mind the importance of giving every opportunity to the trial court to take any steps deemed necessary and appropriate in the pending criminal case, I find that justice demands that I should refrain from making any orders that has the potential of influencing the matters which were still pending before the trial court.

36. Accordingly, the application dated 6th September 2019 is dismissed.

DATED, SIGNED and DELIVERED at KISUMU This 25th day of February 2020

FRED A. OCHIENG

JUDGE