

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL MISC. APPLICATION CASE NO. 160 OF 2020

ENOS MUNDAYI APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONSRESPONDENT

RULING

This matter now comes up for the application of the applicant ENOS MUDANYI dated 29.7.2020. The same relate to the same subject matter as the earlier application of the applicant dated 26.5.2020 and it seeks an order that the motor vehicle registration number KCW 731L, Nissan Sedan, held by the DCI, Dagoretti, be released to the applicant. In the earlier application, the court, by its ruling of 17.7.2020, ordered that the applicant do present himself to the investigating officer with the relevant evidence of the contract of hire between him and the hirer. That upon doing the same, the vehicle would be photographed and released to the applicant on condition that he does not dispose of the same till any further orders of the court are issued.

The applicant has now filed the present application on the basis that the hire agreement was oral and so no evidence of any written contract can be availed. A plea was made that the vehicle be released upon its being photographed.

The respondent has in response to the submissions of the counsel for the applicant, only maintained that the applicant ought to first comply with the earlier orders of the court before any orders may issue on this current application. It was otherwise declared that a decision to charge anyone on this matter has so far not been made.

I have considered the submissions of both sides. Indeed the court ordered the applicant to submit the evidence of the hire contract to the investigating officer in this matter. It has now turned out that the said contract was oral and so on written evidence of the same could be presented. In making this order, the court was however, alive to the fact that the role of investigations fall squarely on the shoulders of the 2nd Respondent, the Inspector General of police and his subordinates.

The following circumstances have formed the opinion of the court in making a finding in the present application:

i) This is a matter relating to an incident that took place on or about February 2020, about 8 months ago. The Director of Criminal Investigations have had this long to conduct and possibly conclude the same is obviously wasting away parked at the station.

It is for these reasons that I find merit in the application dated 29.7.2020. I accordingly allow the same in terms of prayer 2 of the application, that the 2nd Respondent do release the motor vehicle registration number KCW 731L to the applicant. The Respondents are otherwise at liberty to take photograph of the said motor vehicle before releasing the same to the applicant. Orders accordingly.

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020

Court:

Ruling read out in open court (online) in presence of Mr. Momanyi for the state.

HON. JUSTICE D. OGEMBO OGOLA

23RD OCTOBER 2020