

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CRIMINAL APPLICATION NO. 23 OF 2018

STABEX LOGISTICS LTD.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **STABEX LOGISTICS LTD**, the applicant herein, has moved the court by way of Notice of Motion dated 18th November, 2018 under Articles 23, 48, & 159 of the Constitution of Kenya and Section 66 of the Criminal Procedure Code. She is seeking orders as follows:

a) That this matter be certified be certified urgent and be heard on a priority basis.

b) That the respondent be compelled by an order of the court to produce in court motor vehicle Registration Number KCJ 522A Mercedes Benz and its trailer currently held at the Busia weigh Bridge.

2. The application was supported by a sworn affidavit of Abraham Koech Kiprop, the applicant's General Manager and was premised on the following grounds:

a) That the said motor vehicle was detained on allegations of ferrying excess load at the Ahero weigh bridge.

b) That There was a traffic case pending at the Busia Chief Magistrate's Court and which she wanted declared null and void ab initio.

3. It would appear that the applicant has either misunderstood his rights or he is deliberately making it appear so. Once there is an allegation of a breach of the law, and the matter is taken to court, the trial court seized of the matter would be competent to address any issues of the alleged breach of the rights of an accused person. The matter can only be refereed to the High court where there are claims of gross violation of an accused person's rights which may amount to a miscarriage of justice.

4. The issues raised by the applicant herein can best be addressed at the trial of the traffic case pending before the Magistrate's Court. The General Manager cannot purport to raise his defence in this court. He cannot be heard to ask this court to award him Kshs.450,000/= for loss of business. A claim of this nature can only be made in a civil court in a plaint and certainly not in the submissions.

5. The application lacks merit and is accordingly dismissed.

DELIVERED and SIGNED at BUSIA this 29th day of April, 2019

KIARIE WAWERU KIARIE

JUDGE