



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPL. NO. 149 OF 2019

ANDREW KEGODEMBAIZA.....APPLICANT

VERSUS

OCS EMBAKASI POLICE STATION.....1ST RESPONDENT

OCS NYAYO STADIUM POLICE STATION.....2ND RESPONDENT

THE DIRECTOR PUBLIC PROSECUTIONS.....3RD RESPONDENT

RULING

1. In the Notice of Motion dated 20th March, 2019, the Applicant prays for the release of motor vehicle registration No. KBBH 511W which was impounded by the police in an ongoing investigation that led to the sale of the vehicle to him.
2. The undisputed facts about this matter is that a report of theft of the vehicle was made by one Tito Kitanga at Nyayo Police Station vide OB (Occurrence Book) No. 8/31/1/2017. His report was that the vehicle got lost whilst in the hands of his mechanic. On 3rd November, 2018, the vehicle was intercepted in the Nairobi CBD whilst in the possession of the Applicant. It was established that the Applicant had purchased the vehicle in a public auction on 22nd August, 2018 sanctioned by then then officer in charge of crime, Embakasi Police Station one Sheila Kegode. The vehicle had been held as unclaimed property at Nyayo Police Station. On 14th August, 2018 following grant of orders from a magistrate's court, the Autoland Auctioneer advertised the vehicle for sale in a public auction after which the Applicant bought it at Ksh. 30,000/-. He was subsequently issued with a log book.
3. It is also undisputed that the Applicant and police officer Sheila Kagedo who caused the auction are a brother and sister. Interestingly, there exists no record of how the vehicle was transferred from Nyayo to Embakasi Police station where the sale was sanctioned.
4. According the Respondents, a criminal charge of theft was preferred against the mechanic from whose hands the vehicle disappeared. Further an inquiry file has opened with the police to determine how the vehicle was placed for sale by auction and moved to Embakasi Police Station. The file is currently with the DPP for advice. Miss Akunja for the Respondents informed the court that there was a likelihood of the officer who sanctioned the sale may be enjoined in the criminal case as a co-accused. The Applicant in the case is listed as a witness. Counsel therefore objected to the release of the vehicle to the Applicant.
5. Learned counsel, Miss Ofwa for the Applicant urged the court to consider that the Applicant was a *bona fide* purchaser of the vehicle without notice and he should therefore not be denied his rightful title to it.
6. I have accordingly considered the application and respective rival submissions. In my candid view this is case of utter collusion between the police and mechanic on the one hand and the purchaser of the vehicle on the other with a clear mission of dispossessing the rightful owner his legal property. It is interesting the charge against the mechanic came so fast while a clear indication of theft of an exhibit by the police is exhibited by the undisputable facts.
7. No doubt an order was obtained for the sale of the vehicle in a public auction. But the same was preceded by an illegal process of transfer of the vehicle from Nyayo to Embakasi Police Station where the sale took place. Furthermore, a report of the theft of the vehicle had been made long before the vehicle was recovered. And therefore, a subsequent placement of the vehicle as unclaimed goods was not only illegal but unethical. It follows that the sale was sanctioned by hands who had orchestrated a well calculated move to dispossess the rightful owner of his property. Ultimately, the current title of the vehicle was passed to the Applicant through a fraudulent process. If the court were to grant the orders sought, it would be rubberstamping this illegality.
8. I need not add more to my observations save that the DPP should act fast to ensure that the cartels of this process are all brought to book as

opposed appearing to conduct selective prosecution. In fact, the ODPP ought to be proactive in the case by facilitating the original owner regain the possession of his vehicle. Otherwise, the continued detention of the vehicle at the police station will only waste it. Measures can be taken of ensuring that photographs are taken and a sale of it does not take place before the criminal case(s) are concluded.

9. In sum, I find the application without merit and I dismiss it accordingly,

Dated and delivered at Nairobi This 27TH Day of May, 2019.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. Miss Ofwa for the Applicant

2. Miss Akunja for the Respondents.