



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL REVISION NO.228 OF 2018

HUSSEIN KUNO TANO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

AND

MATHEW KARANJA.....1ST INTERESTED PARTY

SHARON MURUGI MUGAMBI.....2ND INTERESTED PARTY

RULING

1. The applicant Hussein Kuno Tano has filed an application dated 20/11/2018 seeking to review and/or set aside the order made at **Baricho SPMC Criminal Case No. 1133 of 2017** which released motor vehicle KBY 995K Toyota Axio to the 1st interested party.

2. The application is based on the grounds that he is the legal owner of the said motor vehicle. That the Court delivered the judgment on the same day while he magistrate ought to have waited for 14 days to allow aggrieved party to appeal. That as a person who claimed to be the owner, he was not given an opportunity to be heard before the vehicle was released. That he was a witness therein and had objected to the release of the vehicle to the 1st interested party before finalization of the criminal case.

3. The 1st interested party Matthew Karanja Maina on the other hand also filed an application dated 10/12/2018 seeking review of the order issued to stay the release orders in **Baricho SPMC Criminal Case No. 1133 of 2017**. It was based on the grounds that he is the legal owner of the vehicle. That the vehicle was stolen from him and he reported to the police. Thereafter, he was contacted by the defendant seeking transfer of the vehicle. The applicant was arrested and the vehicle recovered. That later the accused in **Baricho SPMC Criminal Case No. 1133 of 2017** Sharon Murugi Mugambi was charged in court but acquitted for lack of evidence. That even after completion of the criminal case and orders for release being given, he was denied the vehicle. That vandalism of the vehicle is imminent and sought that the court considers bringing the vehicle to court and it be released from there.

4. The respondent filed an affidavit on 14/01/2013 where the investigating officer stated that Hussein Kuno Tano is the bona fide owner of the vehicle. That the 1st interested party sold the vehicle to Andrew Muchiri Muchoki for Kshs. 820,000/= and transferred the documents to him. However, the cheques issued to him was dishonoured. Therefore, the 1st interested party is not the bona fide owner and his claim lies with Andrew Muchiri Muchoki for recovery of purchase price. Later, the applicant got interested in the vehicle whose beneficial owner was George Wilson Muiruri Mbogua and he allowed his spouse Sharon Murugi Mugambi to sell it to the applicant on his behalf. That the original log book, ignition keys, accessories, NTSA form, ID, KRA PIN of the 1st interested party was handed over to the applicant.

Court order of 19/02/2019:

The court held that the issue in dispute in **Baricho Civil Case No. 4 of 2019** is also in issue in this case. The court proceeded to order proceedings in **Baricho Civil Case No. 4 of 2019** be stayed until further orders of this court.

Revision

The power of this court to revise any order issued by a subordinate court in a criminal case is provided for under **Section 362 and 364 of the Criminal Procedure Code**. Once it is brought to the attention of this court that an order issued was incorrect or illegal, this court is mandated to examine the record of the said subordinate court to determine the correctness, legality or propriety of the said order.

Section 362 of the Criminal Procedure Code states;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

Section 364 (1)(b) of the Criminal Procedure Code states;

“In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may— in the case of any other order other than an order of acquittal, alter or reverse the order.”

Refer to **George Aladwa Omwera v Republic [2016] eKLR**

The Court stated;

It (revision) is only exercised to correct the manifest error in the order of the subordinate courts but should not be exercised in a manner that turns the Revisional court into appeal. The jurisdiction cannot be exercised mainly because the lower court has taken a wrong view of the law or misapprehended the evidence tendered.....

Proceedings in Baricho Civil Case No. 4 of 2019;

PW 1, the 1st interested party stated how he sold the vehicle to Andrew Muchiri at Kshs. 820,000/= and the purchaser gave him a DTB banker's cheque. He gave out the vehicle together with its documents and deposited the cheque. Later he went to find out whether the cheque had cleared wherein he was informed that it was fake. He reported to Sagana police station. Later, he was called by the applicant who informed him he had bought the vehicle and wanted the same transferred to him. He went to meet him in Nairobi and the applicant was arrested and the vehicle recovered in Isiolo. He did not know who sold the vehicle to the applicant.

5. PW 3, a mechanic, confirmed how the vehicle was brought to him to check its condition. That Sharon Murugi Mugambi was the seller and the applicant bought it for Kshs. 650,000/=. However, during cross-examination he stated that when the agreement was prepared at the advocates officer, the seller was a man heavily built and he had never seen Sharon Murugi Mugambi.

6. PW 4 confirmed that Sharon Murugi Mugambi was the seller but the vehicle was registered under the 1st interested party's name. The seller stated that she had bought the vehicle from another person who had not transferred it to his name. He confirmed Sharon Murugi Mugambi was not in the advocates office. This was also confirmed by PW 5, the advocate and also that Sharon Murugi Mugambi did not sign the sale agreement.

7. PW 7, Hussein Kuno Tano, stated how he bought the vehicle from Sharon Murugi Mugambi who stated it belonged to her husband George. He paid Sharon Murugi Mugambi Kshs. 650,000/= purchase price and the vehicle together with the documents were released to him. He later contacted the 1st interested party to effect transfer and when they met he was arrested on allegation that the vehicle had been stolen. He led the police to have Sharon Murugi Mugambi arrested.

8. PW 7, a document examiner confirmed that the questioned documents were done by the same author and signatures belonged to the same person.

PW 8 conducted the investigations.

9. The accused, Sharon Murugi Mugambi, denied knowing Hussein Kuno Tano. That on the date of the agreement she was doing her attachment at Meru Hospital procurement department. She denied the signature on the sale agreement as belonging to her and stated that her ID had gotten lost and she had reported the same vide OB No. 3/24/7/2017.

10. DW 2 a forensic examiner, examined the signature on the sale agreement and that of Sharon Murugi Mugambi and confirmed there were no similarities.

11. DW 3 worked at procurement department at Meru hospital, confirmed that Sharon Murugi Mugambi was on attachment. That they students had to report to him daily and she was present on the incident date. This was confirmed by DW 4 who was also on attachment.

12. DW 5, the husband of DW 1 confirmed he was with her on the incident day from 6:00 a.m to 8:00 a.m when she went on attachment at Meru hospital then returned home at 5:30 p.m. he denied the signatures on the sale agreement did not belong to her and that her ID had previously been stolen.

13. The trial court in its judgment held that there was no evidence tendered to show that the vehicle was not stolen. That there are doubts as to the authenticity of the signatures on the sale agreement and who stole the motor vehicle and proceeded to acquit the accused. Later, the 1st interested part applied for the vehicle to be released to him since the case was concluded which was done on 20/11/2018.

14. The applicant seeks review of the order which was issued on 16/11/2018 and this court to order the vehicle KBY 995K Toyota Axio to be released to the applicant pending the hearing and determination of an intended civil suit.

15. Mathew Karanja also filed an application which is un dated filed on 18/2/2019 seeking an order that Civil Case No. 4/2019 be stopped as

a similar matter seeking to determine ownership of Motor vehicle KBY 995 K is already at the High Court. The applicant, Hussein Kuno has sworn an affidavit stating that he has filed Baricho Principal Magistrate's Court Civil Case No. 4/2019. The plaint annexed shows that the applicant seeks a declaration that he is a bonafide purchaser for value without notice and an order that the vehicle be released to him. My view is that the court is best placed to determine the issue of ownership of the said motor vehicle. It will give both parties an opportunity to be heard and to follow due process.

16. The jurisdiction of this court on revision is limited to correct errors and to determine the legality of propriety of any finding or sentence, either matters must be determined on appeal. The order dated 16/11/2018 was granted ex parte without giving the applicant an opportunity to be heard and before the expiry of 14 days within which a party could file an appeal. A perusal of the Judgment shows that the issue of the ownership of the motor vehicle had not been determined. In the circumstances I order that the order dated 16/11/2018 releasing the vehicle KBY 995K by the D.C.I.O Mwea West is reviewed and set aside. The issue of ownership be determined in Baricho SPM's Court Civil Case No. 4/2019. The file be returned to Baricho Court ie CR. Case No. 1133/2017.

Dated at Kerugoya this 29th day of July 2019.

L. W. GITARI

JUDGE