



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CORAM: R. MWONGO, J.

MISC CRIMINAL APPLICATION NO. 11 OF 2019

DAVID NDERITU WAMBUGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The applicant herein filed a notice of motion on 14th March, 2019 seeking the following orders:-

“1. Spent.....

2. THAT motor vehicle registration number KBM 702X formally KBK 213T and currently detained at Naivasha Police Station is the same that was stolen from the applicant on the night of 30th October, 2015,

3. THAT the said motor vehicle is the property of the applicant although the engine and the chassis number have been tampered with.

4. THAT the said vehicle be released to the applicant herein as it was detained in connection with Criminal Case Number 946 of 2016 at Naivasha Law Courts which case has been closed.

5. Any other or further order this court may find just and fair to grant.”

2. The application is supported by the affidavit of the applicant deponed on 14th March 2019, to which is attached supporting documents in the matter. The grounds on which the orders are sought are:

“a)

b) That the car is legally the property of the applicant herein by virtue of the registration documents placed before this court.

c) That the car was detained in connection with Criminal Case Number 946 of 2016 (accused persons Phyllis Wanjiru, Gabriel Njoroge, Mary Njambi Mwangi) at Naivasha Law Courts in which one of the accused persons was affirmed by the applicant as the same woman that stole from him on 30th October 2015. (Now closed).

d) That it has since been more than 3 years and the applicant’s car continues to corrode and wear off due to inactivity and non-maintenance.

e) That the applicant depended on the car for mobility to his place of work as well as usage by his family both of which have been grievously affected.”

3. At the hearing Ms Maingi for the DPP submitted that the state:

“has no objection to the application. The applicant is willing to co-operate with the state. There is no point if it (the subject vehicle) is wasting away. If he can co-operate with investigators and not sell it (the subject vehicle)”

4. The application being unopposed, and taking into account the conditions indicated by the respondent, prayers 2, 3 and 4 of the application are granted upon the following terms:

a) The applicant shall:

- 1) collect and take possession of the said vehicle ten (10) days after the date hereof subject the other conditions herein;
- 2) not sell the vehicle or part with possession or control thereof or its ownership documents for twenty four (24) months from the date hereof without the written authority of the court;
- 3) during the said twenty (24) months maintain the said vehicle in good and workable order and serviceable condition;

b) The applicant shall at all times co-operate with the police in respect of proceedings in CMCC Criminal Case 946 of 2016 or such other case or continued case with which the aforesaid vehicle has some connection.

c) In the event of default by the applicant or his servants or agents on his behalf on or in respect or any of the conditions herein, the applicant shall be deemed without more, to be in contempt of court.

d) Should the applicant find the conditions herein or any of them to be too burdensome or arduous to abide by, the applicant shall indicate so forthwith to this court and in any event within seven (7) days from the date hereof. In such case, the applicant shall not be entitled to take custody of the said vehicle and the status quo ante shall pertain.

5. Orders accordingly.

Dated and Delivered at Naivasha this 31st Day of October, 2019.

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Ms Maingi for the State
2. Mr. Owuor holding brief for Chuma Mburu for the Applicant
3. Court Clerk - Quinter Ogutu