



REPUBLIC OF KENYA

THE HIGH COURT OF KENYA

AT NAKURU

MISC. APPLICATION NO. 05 OF 2018

JOHN SYIMONJERO.....APPLICANT

-VERSUS-

DIRECTORATE OF PUBLIC PROSECUTION.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

RULING

1. The application before me seeks orders that motor vehicle registration No.KBW 305J, Toyota DBA-NC P81G (Sienta), which is currently being held by the Divisional Criminal Investigations Officer (DCIO) at Nakuru be released to **John Syimonjero**, the applicant herein.

2. The applicant **John Syimonjero** has sworn a supporting affidavit in which he deposes that he was the bona fide owner of the motor vehicle having purchased it from one **Josephat Wanjohi Muhia** of ID No. *[Particulars withheld]*. He has displayed a copy of the log book in the name of **Josphat Wanjohi Muhia** and a motor vehicle sale agreement dated 12th August, 2016. The applicant has further deposed that **James Mwaura Ngige** who was the 4th respondent in CMCC's miscellaneous application No.21/2018 was arrested while in possession of the motor vehicle and that the DCIO subsequently detained the vehicle ostensibly for investigations.

3. At the hearing of the application on 23rd January, 2018 **Mr. Mathea** for the applicant while relying on the sworn affidavit of the applicant, further submitted that the motor vehicle was not an exhibit in the Criminal Case No.1/2018. He stated that the 4th accused was arrested while driving the said motor vehicle. He cited **R V. John Nganga Mbugua (2014) eKLR** to buttress the submission that even if the vehicle were an exhibit the investigators could take photographs of the said vehicle and release it to the owner.

4. The respondents did not file any response to the application. At the hearing however, **Mr. Motende** for the state made oral submissions in response. He informed the court that he had consulted with the investigation officer and the D.C.I.O and that in principal the state was not opposed to the release of the motor vehicle. He further submitted that the said vehicle was an exhibit in Criminal Case No.1/2018 and asked the court to impose conditions and in particular to require the ownership documents to be deposited in court and for the vehicle to be availed if required.

5. I have considered the application. I observe that the vehicle is in police custody for reasons that the 4th accused in Criminal Case (Murder) No.1/2018 **James Mwaura Ngigi** was driving the same when he

was arrested by the police on 27th December, 2017 on suspicion that he was involved in the murder of the deceased. At the time of filing the present application the 4th accused had not been charged. He has now been charged and taken plea and is awaiting trial alongside his co-accused. I observe further that there is contestation whether or not the motor vehicle was an exhibit in the case. That is a matter purely within the discretion of the investigators and the prosecution. For the present what is relevant is whether the vehicle or evidence can thereof, if need be, shall be produced when required by the court.

6. The applicant has submitted through his counsel that he was willing to abide with any conditions imposed by the court. The respondent has also not contested the release. The established practice in our courts is that a motor vehicle would normally be released to the owner on condition that it would be availed whenever required by the court. Such practice which I entirely agree with in the present case, was succinctly stated by my senior sister **Muchemi J** in in **R. V. John Nganga Mbugua** cited above in the following terms:-

“It is the practice in criminal cases that photographs will be taken by the scene of crime personnel of exhibits and scenes of crime which will be produced in evidence during the hearing. It is possible to avail the exhibit itself, the photographs may also be produced. If the vehicle is released after its photographs are taken, no miscarriage of justice will be occasioned during the trial. It is not the duty of the complainant to take photographs of his vehicle and submit them to the police. Instead, it is the duty of the investigating officer to have exhibits photographed and ensure the photographs are processed in the manner authorized by the relevant regulations.”

In the present case, however, I consider it important that the ownership of the motor vehicle, though not contested be verified as the registered owner is different from the applicant.

7. In the premises I allow the application on the following conditions:

- i. The 2nd respondent and specifically the DCIO Nakuru takes photographs of the motor vehicle.**
- ii. The DCIO ascertains the ownership of the motor vehicle.**
- iii. The original log book be deposited in court.**
- iv. Subject to (ii) & (iii) above the motor vehicle be released to the applicant within 2 days of today.**
- v. The motor vehicle be availed in court whenever required in Criminal Case No.1/2018.**
- vi. There shall be no order as to costs.**

Ruling delivered, dated and signed in open court

This 30th day of January 2018

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R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

Mr. Mathea for applicant

Mr. Motende for respondent