



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO. 8 OF 2017

INSPECTOR GENERAL OF POLICE.....APPELLANT/APPLICANT

VERSUS

JACKSON MUTUGI MWANGI.....RESPONDENT/RESPONDENT

AND

NDERITU HARRISON MURUNGA.....INTERESTED PART

RULING

1. The Application dated 22nd March, 2017 is brought under the provisions of Article 159 of the Constitution, Order 22 Rule 22 (1) of the Civil Procedure Rules and Section 3 and 3A of the Civil Procedure Act. The Applicant seeks stay of execution pending the hearing and determination of the Application and the Appeal thereafter. The Applicant also prays for the costs of the suit. The Application is premised on the grounds on the face of the Application and the Supporting Affidavit of CHRISTOPHER SIRO.

2. The grounds of the Application are that the orders compelling the Appellant/Applicant to release forthwith Motor Vehicle Registration Number KBR 834Z have already been served upon the Appellants and that there is an application for the Divisional Criminal Investigations Officer, Industrial Area to appear before court to show cause why he should not be punished for disobeying the orders and the Appellant is apprehensive that if the orders are not granted the appeal will be rendered nugatory. The Appellant depones that being the Government of Kenya is capable of satisfying the judgment and decree after the suit has been heard.

3. The Respondent filed a Replying Affidavit dated 12th June, 2016 in which he deponed that he is the registered owner of the subject motor vehicle KBR 834Z and that the vehicle was impounded on 12th March, 2014 and up to date it's been held at the Directorate of Criminal Investigations premises at industrial Area. He depones that the vehicle has been heavily vandalized and remains in a state of despair and he continues to incur losses as the vehicle was being used for car hire business. The Respondent fails to understand why it has taken that long for the investigations to be concluded.

4. The Interested Party NDERITU HARRISON MURUNGA filed his Replying Affidavit dated 23rd February, 2018 agreeing with the position taken by the Applicant. The Interested Party's concern is that the Respondent would remove the vehicle from the jurisdiction of this Court, modify, dispose of and or destroy the vehicle thereby frustrating the criminal case.

5. The Application was canvassed orally in Court which arguments I have considered. During the hearing Mr. Siro appearing for the Appellant submitted that the Appellant had sold the vehicle to the Interested Party and the vehicle was been held for investigations to find out how the vehicle came to be in the hands of the Interested Party. Further the Appellant submitted that the Respondent has not been cooperative in recording statement with the police. The Interested Party aligned himself with the submissions of the Appellants. On the other hand, the Respondent's counsel Mr. Saruni told the court that the vehicle had been in the station for 4 years and he did not understand what investigation were still being carried out. He lamented that the Respondent has incurred loss in lost business as the vehicle was being used for car hire business.

6. The Application is brought under the provision of **Order 22 Rule 22 (1)** of the Civil Procedure Rules which provides that,

“22. (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.”

7. The above rule empowers this Court to stay execution of a decree/order or to make any orders the court deems necessary pertaining the decree/order. I have considered the Application and the arguments made in Court. The Appellant is apprehensive that the orders sought if granted, the Applicant will dispose the suit vehicle whereas the Respondent is aggrieved that the vehicle has been held for investigations for the last 4 years. Even though the origin of the dispute is not clear, from the Appellant and Interested Party's arguments it appears that the Interested Party's interest is that he bought the subject vehicle but the Respondent is claiming ownership. The Respondent has alleged that he is the bonfide registered owner of the Vehicle.

8. The Appellant has been holding the Vehicle for 4 years which period in my opinion is long enough for a serious investigator to have completed investigations. The Respondent deponed that the vehicle was for car hire and he has lost expected income and that the vehicle has been vandalized while in the custody of the Appellant. The Appellant has not denied this allegation of the vehicle being vandalized. As well the Appellant is not committal on how they intend to compensate the Respondent for the lost income in case the orders are granted. They have not offered any security.

9. The Respondent produced a copy of the log book which indicates that he is the owner of the vehicle. My finding on this Application is that the Appellant has had enough time to conduct his investigations. True to the Respondents word, the vehicle is depreciating and it so continues to do as long as it stays at the Appellants premises. In any event the Respondent has committed to attend court if criminal charges are preferred against him. The Interested Party's fear is that the vehicle could be disposed of or removed from the jurisdiction of the Court. This argument may not hold water since in any unfortunate event that his fears come to be, the interested party can seek monetary compensation in case it is found out that the vehicle belongs to him.

10. In the interest of justice, the following orders are made:-

- 1) Motor vehicle registration No. KBR 834Z be released to the Respondent.
- 2) The same to be photographed by the officers of the Appellant in the presence of all the counsels.
- 3) The log book be deposited in court as security before the vehicle can be released.

Dated, Signed and Delivered at Nairobi this 19th Day of April, 2018.

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L. NJUGUNA

JUDGE

In the Presence of

.....*For the Applicant*