

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.333 OF 2017

JOHNSON NGANGA KAMAU.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The Applicant, Johnson Nganga Kamau filed an application pursuant to the provisions of **Sections 26, 69 and 177** of the **Criminal Procedure Code** seeking orders from this court to have motor vehicle registration No.KBG 567A Mitsubishi Pajero which is currently being held by the District Criminal Investigating Officer, Buru Buru Police Station, to be released to him. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the Applicant. He swore an affidavit in further support of the application. The application is opposed. Sgt. Wilson Tenai, an Investigating Officer based at Buruburu Police Station swore a replying affidavit in opposition to the application.

During the hearing of the application, this court heard oral rival submission made by Mr. Thuku for the Applicant and Ms. Kimiri for the State. Mr. Thuku submitted that the Applicant bought the motor vehicle for a valuable consideration. He explained that the motor vehicle was a salvage motor vehicle which was sold by Monarch Insurance to one Nelson Mwangi. The said Nelson Mwangi sold the motor vehicle to one Stephen Oloo who in turn sold the motor vehicle to the Applicant. He submitted that he was at the time of the purchase of the motor vehicle in partnership with one Edward Njenga. The motor vehicle was registered in the name of his said partner who unfortunately later died. Before his death, he transferred the motor vehicle to the Applicant. Learned counsel complained that without any justification or reason, the police have detained the motor vehicle at the police station. The Applicant urged the court to order that the motor vehicle be returned to him. If there is any claim, then, the same ought to be settled in a civil court and not through criminal process.

Ms. Kimiri for the State opposed the application. She submitted that after a complaint was lodged with the police, it was discovered that the Applicant had fraudulently transferred the suit motor vehicle from Edward Njenga (deceased) to himself. He did this five days after the death of the deceased. Learned state counsel submitted that the police were legitimately holding the motor vehicle while they are investigating the circumstances under which the motor vehicle was transferred to the Applicant after the death of the deceased. She reiterated that the circumstances under which the motor vehicle was transferred raised suspicion that there was criminality involved. She urged the court to allow the police to conclude its investigations and not allow the application.

Having read the affidavits filed by the parties to this application, and having heard the arguments made by learned counsel, this court takes the following view of the matter:

Prima facie, the police have been able to establish that the ownership of the motor vehicle was transferred to the Applicant five days after the death of the deceased. The deceased died on 18th March 2017. The ownership was transferred to the Applicant on 23rd March 2017. There may be an innocent explanation why the transfer was effected after the death of the deceased. One of the reasons may be that there was a delay in the registration process, from the time the documents were lodged for registration with National Transport and Safety Authority (NTSA) to the time the registration was actually effected. It may also be possible that the registration was deliberately effected after the death of the deceased. This can only be unraveled after the police have concluded their investigations. A relative of the deceased lodged a complaint with the police. Whether the complaint is justified or not is subject to investigations. However, the police cannot purport to hold the motor vehicle indefinitely under the pretext that they are still continuing with investigations without an indication as to when they will conclude the investigations.

In the premises therefore, this court holds that the police are legitimately holding the motor vehicle pursuant to a complaint that was lodged by a relative of the previous registered owner who is now deceased, which complaint raises reasonable suspicion regarding the circumstances the ownership of the motor vehicle was transferred to the Applicant after the death of the deceased. However, the police are granted thirty (30) days to conclude their investigations and decide whether or not to charge the Applicant. After the expiry of thirty days, if no action shall be taken by the police, the motor vehicle shall be released to the Applicant without further ado. It is so ordered.

DATED AT NAIROBI THIS 26TH DAY OF JUNE 2018

L. KIMARU

JUDGE