



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISCELLANEOUS CRIMINAL APPLICATION NUMBER 604 OF 2018.**

**TITAN MOTORLINK LIMITED.....APPLICANT.**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup> RESPONDENT.**

**THE INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT.**

**EMMA BRENDA WANJIRU.....3<sup>RD</sup> RESPONDENT.**

**RULING.**

1. Titan Motorlink Limited, hereafter the Applicant, lodged the present application through a Notice of Motion dated 23<sup>rd</sup> October, 2018 seeking orders that; (i) the OCS Kilimani Police Station releases motor vehicle registration number KCQ 431V to the Applicant, (ii) the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be granted leeway to take any photographs or further evidence to be used in any future proceedings, and (iii) the court makes any other orders it may deem expedient in the interest of justice.

2. The application is based on grounds, inter alia, that the Applicant sold the motor vehicle in question to the 3<sup>rd</sup> Respondent upon the payment of a deposit of Kshs. 2,000,000/- and an execution of a sale agreement between the parties. The 3<sup>rd</sup> Respondent however failed to meet the terms of the agreement and the Applicant filed Misc. Application No. 923 of 2018 at Milimani Commercial Courts seeking repossession of the car for non-payment of the balance of the purchase price. That he obtained the order sought but to his dismay the same could not be executed as the vehicle was at Kilimani CID headquarters. Further, that the Applicant is suffering irreparable harm as the vehicle continues to depreciate while in the police's custody. He thus urged the court to order the release of the vehicle to him and also to allow the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to take any further evidence they might require pursuant to their investigation. Finally, that it was in the interest of justice to grant the orders sought. The application was supported by an affidavit sworn by the Applicant.

3. Two replying affidavits were filed in the matter. The first, filed on 27<sup>th</sup> November, 2018, was sworn by the 3<sup>rd</sup> Respondent and in it she deposed, inter alia, that she entered into an agreement with the Applicant for the purchase of the motor vehicle registration number KCQ 431V and confirmed paying a deposit of Kshs. 2,000,000/-. She swore that she was to pay a balance of Kshs. 2,800,000/- within three months but was unable to adhere to the terms of the agreement. That given that she had defaulted on her obligations she stated that she had no objection to the vehicle being repossessed and released to the Applicant. Further, that she would forthwith forfeit any claim or complaint against the Respondents.

4. The other replying affidavit was sworn by No. 91251 PC Mark Ntonja who deposed that he was involved in the investigations giving rise to the present application. He stated that the police received a complaint of misuse of power and abuse of office against the 3<sup>rd</sup> Respondent in that she had used the motor vehicle that is the subject of the present application to effect an arrest. That it was also alleged that the motor vehicle was bought with the proceeds of crime and an inquiry had accordingly opened. That the Directorate of Criminal Investigations, Kilimani Division ordered the 3<sup>rd</sup> Respondent to surrender the vehicle pending investigations. It was averred that investigations established that the vehicle was purchased by the 3<sup>rd</sup> Respondent. He added that the police had since completed their investigations and forwarded the file to the Directorate of Criminal Investigations for further advice and directions. That he had also been informed that the court order from the Milimani Commercial Court was not directed at the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.

5. The application was canvassed before me on 27<sup>th</sup> November, 2018 with Mr. Swaka acting for the Applicant, Ms. Atina for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Mr. Atonga holding brief for Mr. Amutallah for the 3<sup>rd</sup> Respondent. The parties all made oral submissions which reiterated the issues set out in the respective affidavits. I underscore the fact that Ms. Atina and Mr. Atonga conceded to the application.

6. I have considered the respective submissions by the parties and I take the following view of the application. It is clear that there was an

order issued by Hon. Muholi, SRM on 14<sup>th</sup> October, 2018 granting a mandatory injunction against the 3<sup>rd</sup> Respondent to keep the vehicle registration number KCQ 431V in good condition, repair and service for purposes of repossession. The order was however defeated by the fact that the vehicle was being held at Kilimani Police Station pursuant to investigations into the conduct of the 3<sup>rd</sup> Respondent thus necessitating the present application.

7. The court has noted that the purpose of impounding of the vehicle has run its course, as per the replying affidavit of PC Ntonja, police have concluded the investigations. Therefore, the police were under a duty to release the vehicle upon completion of the investigations.

8. Nevertheless, given the order of Hon. Muholi it would appear that a question arises as to the proprietary interest in the vehicle. In my view, the court is relieved of its duty to interrogate the question as it is clear that the 3<sup>rd</sup> Respondent, as per her affidavit, concedes that she defaulted on the terms of the sale agreement and as such she relinquished any interests in the vehicle. Furthermore, she also conceded to the vehicle being released to the Applicant.

9. In light of the foregoing, the court allows the application and hereby orders the immediate release of motor vehicle registration number KCQ 431V to the Applicant. The order shall be served upon the DCIO, Kilimani Police Station for compliance. It is so ordered.

**Dated and delivered at Nairobi this 30<sup>th</sup> day, November, 2018.**

**G.W.NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. *No appearance for Mr. Swaka for the Applicant.*
2. *Miss Sigei for the Respondent.*