



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. APPLICATION NO. 5 OF 2017

JAMES KIBUKU MWANDO.....APPLICANT

-VERSUS-

THE DCIO KIANYAGA POLICE STATION.....1ST DEFENDANT

RULING

1. The applicant **James Kibuku Mwando** filed this application under the inherent powers of the Court, **Section 1A** and **1B** of the **Civil Procedure Act, Order 51 rule 1 Civil Procedure Rules** and all enabling provisions of the law. He seeks orders that:

i. Spent

ii. That motor vehicle registration number KCA 987K being held at Kianyaga Police Station be released to the Applicant forthwith.

iii. That costs of this application be provided for.

2. The application is based on the grounds that –

i. The applicant herein is the registered owner of motor vehicle registration number KCA 987K, Toyota Fielder.

ii. The said motor vehicle was at all material times registered with Equity Bank. Sometimes on or about April 2015 the applicant herein was advanced a loan of Ksh.583,000/- by the Kutus Branch and the motor vehicle log book was designated as the security for the loan.

iii. In order to repay the loan, the Applicant herein hired the motor vehicle to one David Gichiga Kinyua who was to use the vehicle for transport business and make payments of Kshs.3,000/= per day to the Applicant to be applied towards the repayment of the loan.

iv. On or about July, 2016, a complaint was made to Kianyaga Police Station by the Applicant that he has found someone unknown to him with his car who later alleged that David Gichiga Kinyua had fraudulently obtained kshs.730,000/= from him. He alleged that the said David Gichiga Kinyua had represented himself as the owner of the motor vehicle registration number KCA 987 K whereupon they entered into an agreement for the sale and purchase of the said motor vehicle.

v. It was further the third Party's statement that he delivered Kshs.730,000/= in cash to David Gichiga Kinyua and left him (the complainant) in custody of the vehicle.

vi. After the vehicle was not returned to the Applicant within the time frame that was agreed, the Applicant tracked his vehicle and found it where it was and he made a complaint at Kianyaga Police station.

vii. The Police, acting on the information then conducted investigations into the matter leading to the arrest of Mr. David Gichiga Kinyua. The said David Kinyua is currently in the remand. However and the charges of theft and forgery of the log book of the applicant herein were preferred against him. It is the Applicant who assisted the Police to arrest David Kinyua.

viii. motor vehicle has been lying at the Kianyaga Police Station and the Applicant continues to suffer loss and damage arising out of not being able to use the motor vehicle and hence repay the outstanding loan.

ix. The Applicant has been beseeching the Police to give him his vehicle but the Police of Kianyaga Police station have refused. The Applicant therefore prays to this Honourable Court to have the motor vehicle released to him and he undertakes to avail it in court every time it is needed in court.

x. There is a likelihood that if the motor vehicle is not released to the Applicant, the Applicant will continue suffering irreparable loss and the vehicle will continue being wasted in the absence of regular maintenance and repair.

xi. No prejudice will be suffered by any of the parties if the orders sought herein are granted.

3. The application is supported by the affidavit of the Applicant wherein he reiterates the above grounds. He annexed a copy of the log book annexure JKM -1 showing that he is the registered owner of the motor vehicle with Equity Bank. He deposed that there is a likelihood that if the motor vehicle is not released to the applicant he will continue to suffer irreparable loss and the vehicle will continue to be wasted in the absence of regular maintenance and repair.

4. The applicant is seeking orders against the D.C.I.O. Kianyaga Police Station and the O.C.S. Kianyaga Police Station. The two were served with the application on 28th March, 2017 and on 5th April, 2017 they were served with a hearing notice. They did not file any replying affidavits or grounds of opposition. They also did not attend court for hearing. The application therefore proceeded *ex-parte* and unopposed.

I have considered the application. The facts as pleaded by the applicant are not in dispute. The applicant is the registered owner of the said motor vehicle. He uses the said motor vehicle for transport business in order to be able to repay the loan with Equity Bank. If the vehicle is not released to him it will continue to be exposed to the vagaries of weather, suffer wear and tear and the applicant will as a result suffer irreparable loss.

5. The Respondents failed to attend court or file papers to show why they have to continue holding the motor vehicle. The applicant has proved that he owns the motor vehicle. The Police have refused to release the vehicle to him. There is no justification for continued detention of the vehicle and if there is the Police had an opportunity to come and explain to the court. The Respondents cannot detain the vehicle and fail to come to court to justify the continued detention. The applicant should not be made to suffer and to incur losses. I find that the application has merits. I allow it and order that the vehicle be released to the applicant forthwith. I make no orders as to costs.

Dated and delivered at Kerugoya this 28th day of April, 2017.

L. W. GITARI

JUDGE

Delivered in open Court, applicant present, court assistant Naomi Murage this 28th day of April, 2017.

L. W. GITARI

JUDGE

28.4.2017