



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA

MISC. CIVIL CASE NO.1 OF 2016

BONIFACE ONGERA.....PLAINTIFF

-VERSUS-

MARGARET MUNINI

TRAFFIC BASE COMMANDER NYAMIRA.....RESPONDENTS

R U L I N G

1. The applicant, **Boniface Ongera** brings this application for orders, **Margaret Munini**, the Traffic Base Commander Nyamira Police Station to Civil jail for a period not exceeding, six (6) months for disobeying a lawful court order issued by **Hon. E. K. Nyutu, Principal Magistrate at Nyamira Law Courts** on the 14th day of April 2016.

2. Margaret Munini, the Traffic Base Commander Nyamira Police Station do pay to the applicant, an amount equivalent to Kshs.8000 daily from 16th day of April 2016 till the release of the subject motor-vehicle **KXB 953 Toyota Pick-UP** to the custody and control of the applicant.

3. **WHICH APPLICATION** is presumed on the following grounds:

(i) On the 14th of April 2016 Hon. E.K. Nyutu issued an order in **Nyamira Traffic Case No.79 of 2016, Republic –vs- Donald Mogaka** directing that motor vehicle **KXB 953, Toyota Pick – up** be returned to the owner upon personal appearance and proper identification at the Police Station.

(ii) On 17th day of May 2016, the applicant served a copy of the order with an endorsement of a **Penal Notice** upon the office of the Traffic Base Commander Nyamira, one Margaret Munini with all his identification documents

(iii) Nevertheless the respondent has disobeyed the aforesaid court order by failing to return the detained motor vehicle aforesaid.

3. In his supporting affidavit, the deponent avers, *inter alia*, as follows:

1. The proceedings herein relate to failure by the respondent to release my motor vehicle registration **KXB 958, Toyota Pick- UP** held at Nyamira Police Station as directed by **Hon. E. K. Nyutu on 14th day of April 2016 in Nyamira Traffic Case No.79 of 2016.**

2. That after being served with the application for leave has not seen any reason to comply with the court order.

3. That the respondent ought to be committed to jail from a period of six [6] months for disregarding a valid court order so as to serve as a lesson to would be contemnor of court orders to preserve and maintain the dignity and honour of this court.

4. IN RESPONSE the Respondent MARGARET MUNINI MUSAU avers as follows:

1. That there was non-injury road traffic accident along Nyamira – Kisii at Ting’ a area.
2. The accident between two motor vehicles, **KBZ 3484, Toyota Premio** and motor vehicle **KXB 953 Toyota Pick-Up**, both moving in the same direction towards Kisii from the direction of Nyamira.
3. The accident occurred when Registration No. KXB 953, Toyota **Pick-UP** failed to keep the required distance in Traffic Laws and consequently rammed into the Premio from behind.
4. The inspection of both vehicles found that motor vehicle KXB 953 to be defective as per **VTA 837919** – annexed and **marked MMMI**.
5. The driver was charged in court for (1) careless driving (2) driving a defective motor vehicle **contrary to Section 49 (1) of the Traffic Act as read with Section 58 (1) of the Traffic Act**.

However the owner was not traced to answer charges of permitting a defective motor vehicle on the road [copy of the charge sheet is annexed marked **MMII**.

6. On or about 17th May 2016, one Ongera Boniface Mangera served me with the court order from the Principal Magistrate, Nyamira Law Courts asking the vehicle to be released to him.
7. The documents he presented to me were (1) copy of the registration book which indicated the owner to be Nyaanga Asiago, see annexed **MMM.III (a) & (b)**.
8. That however, I requested him to furnish me with the **sale agreement** and the original identity card to establish that he was indeed the owner of the motor vehicle as it was prudent to do and also to enable me arrest him, arraign him in court to answer charges of permitting a defective motor vehicle on a public road a charge which was and is still pending against him at the Traffic Court in Nyamira, something I clearly explained to him.
9. The applicant left promising to bring the documents the following day, however, from that day he has never been seen again at Nyamira Traffic Base.
10. That the applicant has put pressure on me to irregularly release the vehicle to him and drop the charges has been visiting high offices National Police Service has refused to release the motor vehicle detained at the Nyamira Police yard without reasonable cause, the allegation which can be confirmed by the Police County Commander Nyamira.
11. Therefore I have never ignored the court order issued to me by Hon. Nyutu but the complainant has refused and neglects to adhere to the order by failing to represent himself because he is evading arrest for traffic offence pending against him.
12. That I state categorically that if the applicant presents himself and the documents required he will collect his vehicle promptly as I cannot release the vehicle to a stranger.

5. _____ Issues for Determination

1. Was the Respondent served with the court order by the applicant?

2. Did the Respondent disobey the said court order?

6. REPLYING AFFIDAVIT BY MARGARET MUNINI MUSAU sworn on 14TH SEPTEMBER:

Analysis

It is not in dispute that the Respondent was served with the court order by the Principal Magistrate, Hon. E.K. Nyutu to release motor vehicle KXB 953, Toyota Pick-UP, to the applicant, Boniface Ongera. At **Paragraph 9** of her affidavit, the Respondent also admits as such.

The crux of the matter is, did the Respondent disobey the said court order when she failed to release the said motor vehicle?

Close perusal of the said court order dated 16th May 2016, the decreed as follows:

1. That the motor vehicle registration **No.KXB 953, Toyota Pick-up** be returned to the owner upon personal appearance and proper identification at the Police Station where it is being held .

The material words are “.....**personal appearance and proper identification.....**”

In **Paragraph 10** of the said affidavit, the deponent avers, presented to me a photocopy of the national identity card of **Ongera Boniface Mangaa** and a photocopy of registration book of the motor vehicle which show the owner to be Nyaanga Asiago, see **MM III (a) & (b)**.

In **Paragraph 11** of the said affidavit, the deponent, requested the applicant to furnish me with a sale agreement and the original identity card to establish that the applicant was indeed the owner of the motor vehicle as it was prudent to do so and also enable me arrest him and arraign in court to a newer the charges of permitting a defective vehicle on a public road, a charge which is still pending against him at the Traffic Court in Nyamira, a fact that was explained to him.

In **Paragraph 12**, the applicant left promising to bring the documents the following day. However, from that day he has never been seen again at Nyamira Traffic Base.

In **Paragraph 15**, the deponent avers that he has never ignored the court orderby Hon. Nyutu but the applicant has never adhered to the order by failing to present himself and present proper documents because he is evading arrest for the traffic offence pending against him.

7. Findings

The Respondent didn't disobey the court order from the Principal Magistrate Hon. **E.K. Nyutu**.

In fact by to-day she is still waiting for the applicant, to furnish her with original identity card and original log book and the original sale agreement before the said motor vehicle could be released to her.

Instead, it is horrifying to note that the applicant craves to use the court process to commit the Respondent to jail for purported disobedience to a court order.

I am satisfied that the respondent did not disobey the court order. For these reasons, this application is hereby dismissed.

Right of Appeal 14 days.

Dated and delivered at **Nyamira** this 21st day of **April** 2017.

C. B. NAGILLAH

JUDGE

In the presence of:-

Ombachi hold brief for Begi for the Appellant

Emma hold brief for Kiprui for the Respondent

Mercy - Court Clerk