



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PETITION NO. 5 OF 2016**

**EBRAHIM ODHIAMBO OKORE.....PETITIONER**

**VERSUS**

**KENYA REVENUE AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**OFFICER IN CHARGE KENYA REVENUE**

**AUTHORITY BUSIA COUNTY.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

The petitioner is a businessman operating within Busia County. From his pleadings, he trades in eggs and milk. He has been using his motor vehicle registration number **KAH 652 C** in the transportation of his merchandise.

While conducting his business at Tingolo within Busia County, he was stopped by Kenya Revenue Authority officials and his motor vehicle was impounded. It was conditionally released to him when he made an application to this court.

The applicant brought his petition by way of Notice of Motion dated 15<sup>th</sup> September 2016 and was seeking the following orders against the respondents:

1. That pending the hearing and the determination of this petition, motor vehicle **KAH 652 C** be released to the petitioner.
2. That this honourable court be pleased to make a declaration that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents are in violation of Articles 20(2), 27 (1) and (2) and Article 4(3) of the Constitution of Kenya.
3. That costs of this petition be awarded to the petitioner.

The petition was premised on grounds that the petitioner's right to property was infringed, that he was unlawfully discriminated against and that he was denied the enjoyment of his rights under the Bill of rights.

It was argued for the respondents that though the petitioner's motor vehicle was detained, the detention

was within the law.

Briefly the facts prior to the impounding of the petitioner's motor vehicle is that the petitioner bought the motor vehicle in issue in the year 2009. Later in the year 2012, he decided to change the body of the said motor vehicle. He went to Kampala, Uganda and bought a Honda body. He paid the requisite revenue at the Kenya Revenue offices, Busia Kenya. He therefore carried on his business until when the complained of impounding of his motor vehicle was effected.

The respondents' contention is that the Kenya Revenue Authority officials were carrying on their usual duty and when they checked the logbook, the details therein and the chassis of the motor vehicle were at variance. The petitioner did not offer any satisfactory explanation and they impounded the vehicle on suspicion it could have been stolen or illegally imported.

The issues for determination are as follows:

1. Whether the respondents had any legal mandate to impound the petitioner's motor vehicle,
2. Whether they had any reasonable grounds for impounding the said motor vehicle; and
3. Whether the rights of the petitioner were breached or not.

The operations of the 1<sup>st</sup> and the 2<sup>nd</sup> respondents are dictated by **the Kenya Revenue Authority Act** and **the East African Community Customs Management Act**. The Kenya Revenue Authority, is established under the provisions of the Kenya Revenue Authority Act. Section 11 thereof establishes the office of the Commissioner General of KRA and sets out the powers of the office as follows:

- 1. There shall be a Commissioner-General of the Authority who shall be appointed upon the recommendation of the Board on such terms and conditions as are specified in his appointment.*
- 2. The Commissioner-General shall be the chief executive of the Authority and general supervision and control of the Board, shall be responsible.*
  - a. for the day-to-day operations of the Authority;*
  - b. for the management of funds, property and affairs of the Authority; and*
  - c. for the administration, organization and control of the staff of the Authority.*

Section 5 of the East African Community Customs Management Act, 2004 creates the office of the Commissioner of Customs and Excise:

- 1. There shall be appointed, in accordance with provisions relating to Partner States' legislation, a Commissioner responsible for staff. The management of Customs by each of the Partner States and such other staff as may be necessary for the administration of this Act and the efficient working of the Customs.*
- 2. The Commissioner shall be responsible for the management and control of the Customs including the collection of, and accounting for, Customs revenue in the respective Partner State.*
- (3) The Commissioner may authorise any officer to exercise any of the powers conferred by this Act upon the Commissioner subject to such limitations as the Commissioner may impose.*

The powers of the officers authorized by the Commissioner under Section 5 are set out in Section 7 of the Act, which states as follows:

*For the purpose of carrying out the provisions of this Act, every officer shall, in the performance*

*of his or her duty, have all the powers, rights, privileges, and protection, of a police officer of the Partner State in which such officer performs his or her duty.*

Seizure by authorized officers is provided for under Section 213 of the East African Community Customs Management Act, which states:

*(1) An officer or a police officer or an authorised public officer may seize and detain any aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he or she has reasonable ground to believe is liable to forfeiture; and that aircraft, vessel, vehicle, goods animals or other thing may be seized and detained regardless of the fact that any prosecution for an offence under this Act which renders that thing liable to forfeiture has been, or is about to be instituted.*

*(2) Where an aircraft, vessel, vehicle, goods, animal or other thing is seized and detained under this Act by a person other than a proper officer, the aircraft, vessel, vehicle, goods, animal or other thing seized and detained under this Act shall be delivered with full written particulars to the nearest Customs office or to such other place of security as the proper officer may consider appropriate;*

*(3) Where delivery of an aircraft, vessel, vehicle, goods, animal or other thing is not practical under subsection (2), notice in writing shall be given to the Commissioner at the nearest Customs office, of the seizure and detention, with full particulars of the aircraft, vessel, vehicle, goods, animal or thing seized and detained.*

*(4) Where a person seizing and detaining a thing liable to forfeiture under this Act is a police officer and that thing is or may be required for use in connection with any court proceedings to be brought otherwise than under this Act, the police officer may, subject to subsection (5) keep that thing in the custody of the police until those proceedings are completed or until it is decided that no proceedings shall be instituted.*

The operative words for seizure is are **reasonable grounds**. The respondent had powers and authority to effect seizure where they had reasonable grounds.

According to the respondents, there were reasonable grounds for them to seize the motor vehicle of the petitioner. The petitioner did not produce any document to explain the discrepancy between the chassis and the logbook.

The evidence that is available in the petition is that the petitioner bought the Honda body in the year 2012 from Uganda. This is evidenced by a copy of Customs receipt dated 4<sup>th</sup> August 2012. It would appear he never did the necessary formalities at the time of importation. Another document C17 B was date stamped 13<sup>th</sup> January 2016. The letter from the Directorate of Criminal Investigation dated 14<sup>th</sup> March 2016 is in respect of tape lifting of the chassis and engine number for motor vehicle **KAH 652 C**. It is therefore clear that at the time of impounding of the petitioner's motor vehicle, he had no document that would have dispelled the suspicion by the KRA officers.

The KRA officers who impounded the petitioner's motor vehicle had reasonable grounds to do so. The petitioner had not done his part upon importing the Honda body. It would appear that he may have used short cuts in 2012 and that is why he had to go back after the vehicle was impounded to obtain some official documents. He cannot blame the officers for whatever loss he may have incurred, if any.

From my analysis of the facts of this petition, no right of the petitioner was breached. If there is anybody to blame, it is himself. The petition is accordingly dismissed with costs. Before the refund of the deposit is effected, the KRA Busia office must write to the court to indicate that the petitioner has duly complied. Failure to comply, the respondents will be at liberty to impound the said motor vehicle until the petitioner fully complies.

**DELIVERED and SIGNED at BUSIA this 18<sup>th</sup> day of October, 2017**

**KIARIE WAWERU KIARIE**

**JUDGE**