

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 199 OF 2012

SIMON NYUTU WAITHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

I have listened to the submissions by both counsel. The court is aware about the law providing for forfeiture of any vessel or object or instrument that is demonstrated was used in trafficking narcotic drugs. But I am also aware that several factors play in before the forfeiture order is granted. That is not an issue that this court is mandated to consider at this stage. It is an issue that would play in depending on the outcome of a trial.

At this stage, no one has been charged. It is said that the Applicant, the sole suspect went under, a fact he denies claiming that he has been reporting at Buruburu Police Station on a weekly basis.

In my view, it raises eye brows how and why it has taken four months to charge the Applicant. He is now available for arrest and charge. And nothing stops the police from doing so now that they claim they have sufficient evidence to charge him. What the court will not condone is a situation of the police abusing their powers for their selfish ends. Detaining the motor vehicle endlessly is prejudicial to the Applicant. I am not convinced that the Applicant went underground as even a warrant of his arrest was not sought. In that case, if the police do not charge the Applicant by close of day tomorrow, the court will have no alternative but to order the releases of the motor vehicle.

Mention on 18/10/2017 to confirm the same and for further orders.

Dated and delivered at Nairobi this 16th October, 2017.

G. W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Thuo for the Applicant*
- 2. M/s Aluda for the Respondent.*