



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
PETITION NO.4 OF 2016

JAPHETH OGAMBA GICHANA.....PETITIONER

-VERSUS-

1. ATT-GENERAL

2. INSPECTOR-GENERAL OF POLICE

3. BASE COMMANDER-KEROKA POLICE STATION.....RESPONDENTS

J U D G M E N T

1. This is the judgment in respect of petition **No.4 of 2016**. The petitioner in his petition dated **27th November, 2015**, prays for the following orders:

- a. An order that the motor vehicle registration **No. KAQ 215M** Toyota shark, be forthwith released at the normal condition it was to the petitioner.
- b. A declaration that the **2nd** and **3rd** Respondents have breached the petitioner's constitutional right to use and enjoy the said motor vehicle.
- c. Adequate compensation arising to damages occasioned by the contravention of the petitioner's right to property.
- d. Costs of this application be provided for.

2) The Hon. the Attorney-General for the three Respondents having filed the Replying affidavit failed to attend court for hearing of this petition despite being served with the mention date. The affidavit of service was duly filed in court on **21st March, 2017**. The mention Notice bears the attorney -general's office stamp. Therefore the case proceeded with the hearing on the **21st of March, 2017** without the Respondents being represented. Thus the matter proceeded on ex-parte basis.

3) I have read the petition filed on **22nd January, 2016**. I have also read the submissions by the petitioner's counsel, Mr. Bosire Gichana. For the Respondents, I have looked at the Replying affidavit by the 3rd Respondent, Base commander-Keroka Police station which affidavit was filed on the **16th March 2016**.

4) ISSUES FOR DETERMINATIONS

- 1) Whether the detention of the said motor vehicle **KAQ 215M** is

lawful?

2) Whether the petitioner suffered any damage and if so what is the quantum?

3) Who, in this tussle, is to bear the costs of this petition?

CASE ANALYSIS

5) THE PETITION

The main petition on the face of it does not cite the constitutional provisions that it relies on. All petitions must cite the articles of the constitution on which they intend to rely on the breach of which they claim reparations. All the cases cited as authorities cited some sort of provisions of the constitutions they wish to rely on. The petitioner must labour within his pleadings as pleaded.

6) THE RESPONDENT'S REPLYING AFFIDAVIT

The base commander in his affidavit averred as follows:

1. That motor vehicle **KAQ 215M** was indeed impounded and detained by police on **20/02/2015**.
2. That the reasons for impounding and detentions were;
 - a) contravention of the case of insurance,
 - b) being without inspection sticker,
 - c) failure to maintain the motor vehicle parts.
3. The driver of the said vehicle disappeared upon being flagged by the police on patrol on material day.
4. That then the police towed the abandoned motor vehicle for inspection to Keroka police station yard where it is todate.
5. That on **6th October, 2015** the inspection was carried on the said vehicle by Kisii vehicle inspectors.
6. That consequently an inspection report **VTA NO.784747** was made, and the vehicle was confirmed as un-roadworthy.
7. That consequently a prohibition **No. 955834** was duly issued.
8. That since the detention of the said motor vehicle, neither the driver nor the proprietor has visited the police station
9. The deponent prayed for the dismissal of this petition.

7) In my view, the detention of the said motor vehicle is lawful. The owners and the drivers in failing to present themselves at Keroka Police station, for fear of being charged with traffic offence, have caused the continued detention of this vehicle which continues to be lawful ab initio. The Police are not expected to tow the vehicle to the owner. This is the court's response to the first issue raise for determination.

8) The second issue for determination, the petitioner has admittedly, suffered damages for non-use of the said motor vehicle, but this is as caused by himself, in permitting the use of un-roadworthy vehicle, he was contravening the law. And therefore this became the basis of continued detention of the said motor

vehicle.

Therefore arising out of the above reasons, the petitioner is expected to bear the costs of this petition, in my view.

9) FINDINGS

For the above reasons the petition herein be and is hereby dismissed with costs to the petitioner.

As to damages, the petitioner asked for **Ksh. 2,000,000/=** globally.

My assessment would be **Ksh. 800, 000/=**, my consideration being that as to loss of profit the petitioner must mitigate his own losses, these cannot, in my view, accrue ad infinitum. Secondly, this self-same vehicle has been in the past subject of the same litigation in case **No. 213 of 2009**. This looks like a pattern.

10) These are the orders of the court.

Dated, signed and delivered at Nyamira this 11th day of December 2017.

C.B.NAGILLAH

JUDGE

In the presence of:

Bosire Gichana for the petitioner

A.G. [Absent] for respondent

Mercy - Court Clerk