



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL MISC APPLICATION NO. 12 OF 2016

BERNARD NJOROGE KARIUKI.....APPLICANT

VERSUS

OFFICER COMMANDING STATION (KIRITIRI)

OFFICER COMMANDING POLICE DIVISION (MBEERE SOUTH).....RESPONDENTS

DIRECTOR OF PUBLIC PROSECUTIONS

RULING

1. The application was brought under certificate of urgency and was certified as such. In their notice of motion, counsel for the applicant advanced a number of grounds in support of the release of the applicant's motor vehicle registration KBL 775W. Counsel stated that the motor vehicle was used for transport purposes. After it was detained by Kiritiri Police Station, they arrested its driver who was charged in the magisterial court at Siakago in CR No 403 of 2016 with the offence of dealing with alcoholic drinks without a liquor licence contrary to section 7 (1) (b) as read with section 62 of the **Alcoholic Drinks Control Act No. 4 of 2010**. According to counsel, the driver was later released on bond/bail. It is one of their grounds in support of the motion that the vehicle was unconstitutionally and unlawfully detained by the respondents. It is for that reason that they are now seeking the release of the applicant's vehicle to avoid his suffering, because he depends on it for his livelihood.
2. The application is supported by the applicant's supporting affidavit of 12th April 2016. In his affidavit, the applicant has annexed the documents of ownership and the certificate of insurance. He has further stated that the motor vehicle is used for transport purposes in regard to which it is hired and paid for. On the material date, the vehicle had been hired to transport beer when it was stopped at Matuombare area by the police. The police then detained the vehicle.
3. According to the applicant, there was no justification for the continued detention of his motor vehicle, which he now says has led to loss of his business. It is his prayer that the motor vehicle be released unconditionally so that he is not deprived of its use. It is also his affidavit evidence that the offence with which his driver is charged does not justify its detention.
4. In their submissions, counsel for the applicant urged the court to release the motor vehicle to their client. Counsel submitted that by virtue of the offence with which the driver is charged, the vehicle is not subject to forfeiture. Counsel further submitted that if it is required as an exhibit, the police are free to have it photographed and have it availed to court whenever it is required. He also urged the court to take into account that the motor vehicle is a source of their client's livelihood.
5. Ms Mbae for the respondents did not oppose the motion. However, she urged the court that the

- motor vehicle be released on the following conditions:
1. That it be photographed by the police.
 2. That its logbook should be deposited with the trial court namely the magisterial court at Siakago.
 3. That the same vehicle be produced in court whenever it is required by the trial court.
6. Finally, she submitted that in the event the court orders for the release of the motor vehicle, the release order should be directed to the OCS Kiritiri Police station and the OCPD in charge of Mbeere South Police Division.
7. I have considered the submissions of both counsel. I find that this is a fit and proper case for the release of the motor vehicle to the applicant. The driver is charged under the Alcoholic Drinks Control Act which does not authorize forfeiture of the motor vehicle. It may or may not be produced as an exhibit in the course of the driver's trial in court. And for that reason, it is only prudent that photographs of the subject motor vehicle be taken, which is one of the conditions, Ms Mbae wanted imposed as a condition of its release.
8. As regards the second condition for its release, which is that the logbook be deposited with the trial court, I find it to be a problematic condition. Firstly, the subject motor vehicle has not been produced in court as an exhibit. If this had been done, then this condition would have been sound in law and unnecessary. In the circumstances, the logbook (the document of ownership) should be deposited with the OCS Kiritiri Police Station.
9. Condition number 3 which is that the subject motor vehicle be produced in court when required is equally problematic. The problem is that only the prosecutor in consultation with the investigating officer are in a position to decide whether it should be exhibited in court or not. I am not ruling out that the trial court may on its own motion require the motor vehicle to be produced. For this reason, condition number 3 that the motor vehicle be produced in court is allowed if it is necessary.
10. In the light of the foregoing I hereby grant the applicant's prayer No. 2 in their notice of motion that the motor vehicle registration No KBL 775W be released to the applicants subject to its logbook being deposited with the OCS Kiritiri Police Station and photographs of the vehicle being taken by the police.
11. There will be no orders as to costs as counsel for the respondent conceded the application.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **19th** day of **APRIL 2016**.

In the presence of Mr Momanyi for the Applicant and Ms Mbae for the Respondent

Court clerk R. Njue

J. M. BWONWONGA

JUDGE

19.04.16