



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION NO. 208 OF 2014

MOSES NJENGA KIBE.....APPLICANT

VERSUS

OKALL BARRACK1ST RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY2ND RESPONDENT

RULING

1. This judgment concerns the Notice of Motion amended on 29th October 2014 which is supported by the Applicant's Supporting Affidavit sworn on 29th October 2014.
2. The Applicant seeks the following orders:

(a) the Director-General of National Transport and Safety Authority (NTSA) do re-register the Applicant as the legal owner of motor vehicle registration number KBK 608 N Toyota Station Wagon.

(b) the Applicant Moses Njenga Kibe be re-issued with another log book and set of number plates for the said motor vehicle registration number KBK 608 N Toyota Station Wagon.

(c) the aforesaid registration do take place within 30 days from the date of issuance of the order

3. The applicant was the registered owner of the motor vehicle registration number KBK 608 N Toyota Station Wagon which he purchased on 5th March 2010 (see "MWK I (a)") He hired it out to Jak & Mir Car Hire and Tours Limited who in turn hired it to Michael Mwangi. However the said Michael Mwangi failed to return the vehicle after the period of hire expired or upon demand by the Applicant.
4. The *ex-parte* Applicant reported this fact to the Flying Squad at Pangani Police Station who embarked on looking for the vehicle. They eventually traced and recovered the vehicle from the 1st Respondent. It did not have number plates and had been transferred to the 1st Respondent using fake documentation.
5. The vehicle was released to the Applicant but without number plates. He requested the 2nd Respondent severally to reverse the 1st Respondent's registration and presented his original logbook for this purpose but has not been successful. In addition, he has been forced to use

- handwritten number plates on his vehicle which has resulted to harassment from the police.
6. He now asks this court to compel the 2nd Respondent to re-register him as the owner of the vehicle and issue him with another log book and a set of number plates.
 7. Despite being served, none of the Respondents entered appearance or filed any documents to controvert the *ex-parte* Applicant's averments and this case was therefore unopposed.
 8. The *ex-parte* Applicant's case is straightforward. He purchased the vehicle for Kshs. 570,000/= and was issued with the original logbook. He hired out the vehicle to a company that specialises in car hire services which then hired it out to a third party. The third party however refused to return the vehicle and converted it to his own use.
 9. The vehicle was recovered from the 1st Respondent who offered no explanation as to how it came to his possession. He did not explain why the vehicles number plates were missing or the circumstances under which the vehicle was transferred to him.
 10. Thus, the 1st Respondent did not establish any legal title over the vehicle that could displace the Applicant's claim of ownership. In contrast, the Applicant proved on a balance of probability that the vehicle was unlawfully transferred to a third party and its number plates discarded.
 11. Therefore, he is entitled to be registered as the lawful owner and to have a valid logbook. He is also entitled to be issued with new number plates.
 12. Accordingly, I grant the orders sought *inter alia*:

(a) the Director-General of National Transport and Safety Authority (NTSA) do re-register the Applicant as the legal owner of motor vehicle registration number KBK 608 N Toyota Station

(b) the Applicant Moses Njenga Kibe be re-issued with another log book and set of number plates for the said motor vehicle registration number KBK 608 N Toyota Station Wagon.

(c) the aforesaid registration do take place within 30 days from the date of issuance of the order.

d) There shall be no orders as to costs.

Orders accordingly.

Dated, Signed and Delivered at Nakuru this 13th day of March, 2015.

A. MSHILA

JUDGE