



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTION PETITION NO 427 OF 2013**

**BENSON IREGI MUYA .....PETITIONER**

**VERSUS**

**INSPECTOR GENERAL OF POLICE .....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL**

**INVESTIGATIONS DEPARTMENT .....2<sup>ND</sup> RESPONDENT**

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

**JOHN MUIRURI KAMAU .....INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. In his Amended Petition dated 5<sup>th</sup> September 2013, the petitioner alleges violation of his constitutional rights under Article 40 and 47 in respect of motor vehicle registration number KBS 021B which he alleged he had purchased on 26<sup>th</sup> May 2012. He states that the motor vehicle had, however, been impounded by officers of the respondent on 12<sup>th</sup> May 2013.

**The Petitioner's Case**

2. In his affidavit sworn in support of the petition on 21<sup>st</sup> August 2013, the petitioner, Mr. Benson Iregi Muya avers that on 26<sup>th</sup> May 2012, he purchased motor vehicle registration No KBS 021B Toyota Fielder from Rift Cars Motor bazaar for a sum of Kshs1,100,000 out of which he paid Ksh280,000 as a deposit with the balance being financed by the Equity Bank Ltd. He states that he obtained the vehicle logbook which was registered in his name and the name of the bank, and took possession of the vehicle. He has annexed a copy of the logbook and a letter from the bank with regard to the motor vehicle.
3. He states that thereafter, he gave his vehicle to his driver, one Charles Wanjohi Ndirangu, to be used for car hire business on a self-drive basis. On 16<sup>th</sup> May 2013, the said Charles Wanjohi leased the car to one Jackson Kinuthia Chege who wanted it for 10 days, and an agreement to that effect, which is annexed to the petitioner's affidavit, was signed.
4. According to the petitioner, the said Jackson Kinuthia Chege extended the car hire for more than 5

days, and the petitioner came to learn later that the said Jackson Kinuthia Chege had committed some fraud by illegally selling the said motor vehicle without his knowledge when he was summoned by CID officers at Central Police Station. He states that he presented himself at the station and produced all his original documents.

5. The petitioner avers that he was not a party to the alleged fraud; that he demanded the release of the motor vehicle to him but the police refused and stated that they would detain the motor vehicle until he obtained a Court order for its release.
6. Mr. Muya avers that he is an honest businessman and is a stranger to the alleged fraud committed by a third party. He states that the actions of the respondents in detaining his vehicle over matters to which he is not a party are arbitrary and an infringement of his constitutional rights. He asks the Court to grant the following orders:

- 1. An order of mandatory injunction against the 1st and 2nd respondents, their agents, officers directing them to release the petitioners motor vehicle registration no KBS 021B held at the central Police Station Nairobi.**

- 2. An order of declaration that the petitioners rights under Articles 40 and 47 of the constitution of Kenya have been infringed by the 1st respondent.**

- 3. An order of compensation to the petitioner for the days the motor vehicle has been held.**

- 4. Any other relief the court deems fit to grant.**

#### **The Interested Party's Case**

7. The interested party, Mr. John Muiruri Kamau, in his affidavit sworn on 22<sup>nd</sup> November 2013 alleges that he purchased the motor vehicle in dispute from a person he believes to be the petitioner when he saw an advertisement in respect thereof in the Nation Newspaper of 21<sup>st</sup> May 2013. He states further that he conducted a search in respect of the motor vehicle and decided to buy it, which he did for a sum of Ksh 710,000/-, and was given possession, as well as the logbook and transfer forms. It was when he went to register the motor vehicle and presented the logbook and transfer to the Kenya Revenue Authority (KRA) that he was informed that the transfer could not be processed as there were issues with Equity Bank.
8. He avers that he then took the motor vehicle to Central Police Station on 24<sup>th</sup> May 2013 so that the police could verify the authenticity of the documents that he had been given. He states that he eventually met with the petitioner who said that the motor vehicle had been lost, but avers that no report had ever been made to the police about the loss of the motor vehicle. He states that the petitioner moved to Court while the investigations were ongoing and while fully aware of this fact.
9. The interested party avers that in view of the dispute as to ownership of the motor vehicle, the interests of justice demand that the police be allowed to investigate the matter. He further avers that the dispute as to ownership can only be settled in a civil court by way of evidence from the petitioner and the interested party. It is his case that he has given evidence in accordance with section 8 of the Traffic Act, and if the petitioner was denying executing the documents or receiving the money for the sale of the motor vehicle, that could best be resolved in a civil suit. It was also his submission that the petitioner had not joined as a party to these proceedings the person whom he alleged had leased the motor vehicle. It is also his contention that the motor vehicle should be released to him as he was in possession of it and had taken it to the police station.

#### **The Respondents' Case**

10. The respondents, through the office of the Attorney General, opposed the petition on the basis of

grounds of opposition dated 31<sup>st</sup> October and an affidavit sworn by Philip Kibet, the Investigating Officer in the matter, on 24<sup>th</sup> September 2014.

11. The respondents take the position that the issues for consideration by the Court is whether the respondents have violated the petitioner's rights under Article 40 and 47. It was their case that the petitioner has an obligation to establish the violation of his rights in accordance with the dictum in **Anarita Karimi Njeru –vs- Republic (1979)KLR 154**, which he had failed to do.
12. The respondents assert that they did not seize the motor vehicle. It was taken to the police station by the interested party, who alleged that he had purchased it but had problems with registration. It was also the respondents' case initially that there are criminal proceedings pending involving two persons, Jackson Kinuthia Chege and Luka Machira Kimiti.
13. In the affidavit sworn on 24<sup>th</sup> September 2014, Mr. Philip Kibet states that the interested party took the subject motor vehicle to Central Police Station claiming that he purchased it but upon lodging the documents for registration with Kenya Revenue Authority, he was informed that the signature of Equity Bank and the logbook in respect of the motor vehicle were forged. Mr. Kibet gives further details with respect to what he established in the course of his investigations.
14. He has annexed to his affidavit a copy of the Daily Nation classified advertisement in respect of the motor vehicle, an email message from one Jepkosgei forwarding a scanned copy of the logbook to the interested party, evidence by way of a bank statement of withdrawal of Kshs 710,000 by the interested party, and a sale agreement between the interested party and the alleged Benson Iregi Muya. He has also produced in evidence copies of the alleged Benson Iregi Muya's PIN Certificate, identity card, as well as a purported letter of discharge from Equity Bank.
15. Mr. Kibet also avers that he later met the petitioner who produced to him various documents, including his identity card and PIN certificate. His investigation with the Director of Registrar of Persons, Kenya Revenue Authority, and Equity Bank established that the documents that the interested party had given to the police, on the basis of which the motor vehicle was sold to him, were all forgeries. Mr. Kibet avers that he has identified two suspects who are still at large, and obtained warrants for their arrest in Miliman Miscellaneous Application No. 1430 of 2013. These two persons are Jackson Kinuthia Chege and Luka Machira Kimiti. Mr. Kibet avers that the ownership of the motor vehicle is in serious dispute and the vehicle cannot therefore be released to either of the parties unless the Court so orders.
16. The respondent submitted that the proper forum to determine to whom the vehicle should be released was a civil court, not the constitutional court, and the respondents could not release the motor vehicle unless it was established to whom it belongs. The respondents therefore asked that the petition be dismissed.

### **Determination**

17. I have read the pleadings and submissions of the parties, and considered the documents annexed thereto. The petitioner alleges that he is the registered owner of motor vehicle registration number KBS 021B. He purchased it with the assistance of Equity Bank, and the vehicle is registered in his name and that of the bank. This fact is not disputed.
18. The interested party alleges that he purchased the motor vehicle from the petitioner, and paid for it Kshs 710,000. He states that he had searched the motor vehicle at the Kenya Revenue Authority Offices, and presumably because he was satisfied with the results of the search, he decided to buy it. He was given a copy of a logbook and transfer by the person whom he believes was the petitioner, but on presenting them to KRA for registration, he was informed that the signature of the bank and the logbook were forgeries. The interested party therefore took the vehicle to Central Police Station for the police to investigate the matter.

19. From the affidavit of Mr. Kibet, the investigating officer in the matter, it emerges that the documents that the interested party was given were forgeries, and that two people, one Jackson Kinuthia Chege and Luka Machira Kimita, are being sought by police in connection with the forgery.
20. The petitioner alleges violation of his right to property by the respondents. However, from the evidence before me, the respondents did not arbitrarily, or at all, seize the petitioner's vehicle. It was taken to them by the interested party who alleged to have bought it, but who was given fraudulent documents in respect of the motor vehicle.
21. Is there any violation of the petitioner's rights? In my view, once the police established that the documents on which the interested party was relying on were fraudulent, they ought to have released the motor vehicle to the petitioner: the interested party had no title to the vehicle, the maxim of law being that a thief can pass no better title than he himself possesses.
22. The interested party argues that the issue of ownership of the vehicle can only be resolved in a civil court. It is noteworthy, however, that he has not filed a civil claim in respect of the vehicle- at least no evidence was placed before the Court in this regard.
23. That being the case, and unless the police have any other lawful basis for holding the motor vehicle in dispute, then it should be released to the registered owner, the petitioner. The Court observes that the motor vehicle has been in police custody since 26<sup>th</sup> May 2013. Two years is sufficient time for the police to investigate and institute prosecution in respect of any criminal actions in respect of the motor vehicle.
24. In the circumstances, it is my finding and I do hold that the continued detention of the petitioner's motor vehicle KBS 021B is without legal basis. I therefore direct that the said vehicle be released to the petitioner within the next fourteen (14) days from the date hereof unless there is a legitimate basis for its being held.
25. Each party shall bear its own costs of the petition.

**Dated, Delivered and Signed at Nairobi this 15<sup>th</sup> Day of April 2015**

**MUMBI NGUGI**

**JUDGE**

**Mr Mutai instructed by the firm of Kipsang Mutai & Co. Advocates for petitioner**

**Mr Mohamed instructed by the State Law Office for respondents**

**Mr Kigen instructed by the firm of Kigen & Associates Advocates for interested party**