

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

MISC. APPLICATION NO. 16 OF 2015

(FORMERLY HOMA BAY HCMISC NO. 6 OF 2015)

BETWEEN

KENYA NATIONAL HIGHWAYS AUTHORITY APPLICANT

AND

PERIS AGUTA RESPONDENT

RULING

1. The Notice of Motion in this matter seeks an extension of time to file and serve the Memorandum and Record of Appeal against the Ruling and orders of **Hon. J. Mitey** delivered on 14th March, 2015 in **Rongo, SRMCC Misc Application No. 44 of 2014 (Peris Aguta vs. Kenya National Highways Authority)**.

2. The matter in the subordinate court was commenced by a Notice of Motion under **Order 40** of the **Civil Procedure Rules** and **Articles 40 (1) (3)** of the Constitution seeking an order for the release of Motor vehicle registration No. KBP 849Q, Isuzu Lorry which had been detained at the Rongo Weighbridge. After hearing the matter the learned magistrate ordered release of the vehicle unconditionally on the ground that the procedure adopted for impounding the vehicle violated the rules of natural justice and **Article 49 (1)** of the Constitution.

3. At the hearing of the application, I indicated that the Court has no jurisdiction to determine a matter to enforce fundamental rights and freedom as **Article 23** of the Constitution as read with **Article 165** thereof reserved such jurisdiction to the High Court unless legislation enacted under **Article 23(2)** provides otherwise. Furthermore, since the vehicle had been released no purposes would be served by the intended appeal as the applicant could still prefer charges against the appellant for infraction of the **Kenya Roads (Kenya National Highway Authority) Regulations, 2013**.

4. Counsel for the parties agreed that the Court could therefore exercise its supervisory jurisdiction under **Article 165 (6)** of the Constitution to quash the decision which was obviously made without jurisdiction in order to obviate further litigation.

5. I am therefore satisfied that the orders issued in **Rongo SRMCC MISC. APP. NO. 44 of 2014** were made without jurisdiction and as such they are quashed with the result that the Notice of Motion dated 17th October 2014 filed in the subordinate court is struck out. This is without prejudice to the right of the respondent to take any statutory action it shall deem necessary.

6. There shall be no order as to costs.

DATED and DELIVERED at MIGORI this 19th day of June 2015

D.S. MAJANJA

JUDGE

Mr Ochieng instructed by Ogola Okello & Company Advocates for the applicant.

Mr Ojala instructed by P. R. Ojala & Company Advocates for the respondent.