



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 125 OF 2015**

**REPUBLIC.....APPLICANT**

**VERSUS**

**INSPECTOR GENERAL OF POLICE THRO’**

**DIVISIONAL CRIMINAL INVESTIGATION OFFICER**

**(DCIO), RUAU POLICE STATION.....**

**RESPONDENT**

**EX-PARTE**

**BENJAMIN MURITHI NYAGA**

**JUDGEMENT**

1. Through the notice of motion application dated 5<sup>th</sup> May, 2015 the ex-parte Applicant, Benjamin Murithi Nyaga prays for orders that:

**“1. The Honourable Court be pleased to grant to the Applicant:**

- a. **AN ORDER OF MANDAMUS compelling the Inspector General of Police through the DCIO Ruai Police Station to release motor vehicle Toyota Fielder registration number KBZ 882M to the Applicant; and**
- b. **AN ORDER OF PROHIBITION directed at the Inspector General of Police through the DCIO Ruai Police Station prohibiting them from in any way unlawfully or illegally interfering with the Applicant’s enjoyment and ownership of motor vehicle Toyota Fielder registration number KBZ 882M.**

**2. The Applicant be awarded the costs of this application.”**

2. The Inspector General of Police who has been sued through the Divisional Criminal Investigation Officer (DCIO), Ruai Police Station is Respondent.

3. The Applicant’s case is that at all times material to these proceedings he was the registered owner of motor vehicle registration number KBZ 882M Toyota Fielder. On 13<sup>th</sup> December, 2014 he leased out the said motor vehicle to one Felistus Ndinda Kioko who informed him that she was

going to use the vehicle to pick up Catherine Wanjiru who was flying into the country from America. A lease agreement for the period 14<sup>th</sup> December, 2014 to 23<sup>rd</sup> December, 2014 was entered into between him and the said Felistus Ndinda Kioko.

4. The Applicant averred that on 20<sup>th</sup> December, 2014 he informed Felistus that he wanted to inspect the vehicle and she told him that she was going to Carnivore. She later switched off her phone. The Applicant was alarmed and he went to check at Langata Police Station if an accident involving Catherine Wanjiru, Felistus Ndinda Kioko or his motor vehicle had been reported at the station but found that there was no report.

5. Later, the Applicant learned that his motor vehicle has been detained at Ruai Police Station having been sold to one Mr. Ndirangu who had voluntarily driven the motor vehicle to the Police Station on 31<sup>st</sup> December, 2014.

6. It is the Applicant's case that the DCIO and the OCS of Ruai Police Station have refused to release the vehicle to him unless he produces a court order compelling them to release the car. The Applicant contends that their decision to hold onto his vehicle is unreasonable, irrational, unfair, illegal and an abuse of power. It also amounts to a violation of his right to own and enjoy property.

7. Despite evidence of service of the application on the Respondent, the Respondent did not file any response to the application. The application is therefore unopposed.

8. A perusal of the application and the supporting documents shows that the Applicant is the registered owner of motor vehicle registration number KBZ 882M registered on 7<sup>th</sup> July, 2014 through registration certificate K520958W (Original No. 20141921276). The Applicant has also exhibited a car lease agreement dated 14<sup>th</sup> December, 2014 showing that he had indeed hired his car to one Felistus Ndinda Kioko holder of identity card number 26109784 for ten days from 14<sup>th</sup> December, 2014 to 23<sup>rd</sup> December, 2014. He has also exhibited a copy of the national identity card of the said Felistus Ndinda Kioko.

9. There is no reason given as to why the Respondent has continued to detain the Applicant's motor vehicle. There is no evidence that the Applicant or anybody else has been charged in Court with any offence in relation to the said motor vehicle. If the police had any evidence against the Applicant they ought to have taken him to Court. To continue detaining his vehicle amounts to abuse of power.

10. In the circumstances of this case, the only remedy available is an order directing the release of the said motor vehicle. An order of mandamus is therefore issued compelling the Respondent to forthwith release motor vehicle registration number KBZ 882M to the Applicant Benjamin Murithi Nyaga. The order will only be implemented if the said motor vehicle is not being held as an exhibit in any criminal proceedings already commenced in any Court. The Respondent is at liberty to take photographs, prepare reports and retain photocopies of the logbook, road licence and any other document for use in any criminal proceedings that may be commenced in future. There is no order as to costs.

Dated, signed & delivered at Nairobi this 20<sup>th</sup> day of August, 2015

**W. KORIR,**

**JUDGE OF THE HIGH COURT**