



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS PETITION NO. 9 OF 2014

MUKTAR MOHAMUD MOHAMED APPLICANT

VERSUS

1. DIRECTOR OF PUBLIC PROSECUTIONS

2. PROVINCIAL CRIMINAL INVESTIGATIONS

OFFICER MOMBASA COUNTY

3. MOMBASA COUNTY CRIMINAL

INVESTIGATIONS DEPARTMENT..... RESPONDENTS

RULING

The Originating Notice of Motion application dated the 15th day of January, 2014 and which is expressed to be brought under articles 22, 47, 50 and 165 of the Constitution, rules 20 and 21 of the Constitution of Kenya (Supervisory jurisdiction, protection of fundamental rights and freedoms of the individual) High Court practice and procedure rules, seeks orders that this Court do issue a conservatory order to bar, restrain the Respondents and or their agents from arresting the petitioner/Applicant and or proffering charges prosecuting further proceedings in any Criminal case that the Respondents may fabricate against the Applicant Muktar Mohamud Mohamed.

That the Court do issue an order directing the Respondents to revert to the possession of the Applicant Motor Vehicle Registration Number KBQ 356L, Mercedes Benz Prime Mover and Trailer Registration number ZC 1744.

An order that the Respondents do desist from any further arbitrary search and seizure of the applicants properties Bank accounts.

That the Court do find that the actions of the Respondents on the 14th day of January, 2014 to forceble entry, seizure of personal property arrest and detention was a grave upfront to the applicants Constitutional rights to fair administering of Justice and deprivation of property by abuse of office.

The grounds are that the 2nd Respondents agents without notice or search Warrants stormed into the applicants residence and carried away vital identification documents and the motor vehicle

above-mentioned detained the said properties and released the Applicant.

That the motor vehicles and other properties seized were taken to provincial CID Headquarters where an inventory was made and they were left at the mercy of police officers and vagaries of weather.

Further that no search Warrant had been issued or shown to the applicant.

The applicant was not informed of the charges facing him as required under article 50 (1) (b) of the Constitution.

This application is supported by the Affidavit of Muktar Mohamud Mohamed the petitioner herein.

This application is opposed and the prosecution relies on the replying affidavit of corporal Simiyu who is the Investigating officer in the case. He deposes that on the 13th day of December, 2012 one Khadija Abduraman Zuberi sold motor vehicle registration number KBQ 356L Azor Mercedes Benz Prime Mover and Trailer registration number ZC 1744 to Brandylnn Mbithe Mwangangi for Ksh. 4.2 million.

The purchaser Brandylnn Mbithe Mwangangi paid a total of Ksh. 2.1 million by 20th December, 2012 and the motor vehicle and original keys were handed over to her by Khadija Abduraman Zuberi while awaiting full payment.

The said motor vehicle was taken for repairs on diverse dates between 22nd December, 2012 and 29th December, 2013 totaling Ksh. 414,000/=.

Further that in the month of March, 2013 without the purchaser's knowledge the motor vehicle was attached by auctioneers.

The purchaser filed a civil suit for purposes of recovery of her motor vehicle.

An application was made under certificate of urgency through her Advocate whereby she obtained orders returning back the motor vehicle into her possession pending hearing and determination of the suit and she was compelled to deposit the remaining balance of Ksh. 2.1 million in Court.

It is further deposed that in the course of the proceedings in Court Khadija Abduraman Zuberi produced a forged agreement and the purchaser came to know of it whereupon the matter was reported to police vide OB/NO./40/28/3/2013.

The purchaser later on became sick and succumbed to the illness thereafter leaving her Husband Mustafa Yusuf Omar to take over the matter.

The said Mustafa raised a sum of Ksh. 1.1 million which he deposited in Court leaving a balance of Ksh. 1.1 million but before he could reclaim the vehicle it was sold by public auction and transferred to one Muktar Mohamed the petitioner in this case.

After those turn of events Mustafa Yusuf reported the matter to police. After investigations the motor vehicle in question was impounded by police while parked beside the road at Port Reitz.

It is further contended that the police are investigating possible charges of obtaining money by false pretences, forgery, uttering a document with intent to defraud and stealing of a motor vehicle.

Upon hearing learned State Counsel and Counsel for the defence and perusing the petition the affidavits and annexures thereto I do find that the police had a good reason to impound the vehicle registration number KBQ 356L Azor Prime Mover and its Trailer registration number ZC 1744.

It had been sold by one Khadija Abdulrahman Zuberi to one Brandylnn Mbithe Mwangangi for Ksh. 4.2 million. There is evidence that a total of Ksh. 3.2 million had already been paid towards the purchase of

the said motor vehicle when it was allegedly sold to the petitioner in this case. This Court is not in a position in the pleadings before it to ascertain whether he was an innocent bonafide purchaser value or not. This would be determined in a civil suit. It is noted that part of the ruling in Chief Magistrate's Civil Case Number 434 of 2013 Mombasa between Brandylnn Mbithe Mwangangi the plaintiff and Khadija Abdulraman Zuberi Defendant has not been annexed and the orders given by the learned trial magistrate are not included.

However, it is noted that in his petition the petitioner does not explain how he came to acquire motor vehicle registration number KBQ 356L Mercedes Benz and Trailer Registration Number ZC 1744.

There is no mention in the petition of pending civil proceedings in the lower Court concerning the motor vehicle and the trailer subject matter of this petition.

I do find that the petitioner has not come to Court with clean hands. The police had a legitimate reason to impound the vehicle within a reasonable period pending investigations on allegations obtaining money by false pretences, forgery and related offences.

The petition has no merit and its dismissed.

Ruling delivered dated and signed in open Court this **21st** day of **February, 2014**.

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M. MUYA

JUDGE

21ST FEBRUARY, 2014

In the presence of:-

Learned Counsel for the State Mr. Ayodo

Learned Defence Counsel Mr. Egunza

Court clerk Mr. Musundi.