



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO.178 OF 2014**

**RAPHAEL OCHIENG CHOKA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Raphael Ochieng Choka has moved this court by an application made pursuant to **Articles 47 and 48** of the **Constitution** seeking orders of this court to compel the District Criminal Investigation Officer (DCIO) Industrial Area Police Station to unconditionally release his motor vehicle registration number KAX 642J, a Toyota Corolla saloon. The Applicant states that the police had without any justifiable reason detained his motor vehicle at the said police station. The application is supported by the annexed affidavit of the Applicant. During the hearing of the application, Ms. Aluda for the State opposed the application on the grounds that the police were investigating whether the said motor vehicle had been procured from proceeds of crime. Mr. Mung'au for the Applicant submitted that since the motor vehicle was detained in June 2014, the police had not taken any action to charge the Applicant with any criminal offence.

This court has carefully considered the facts of this case. From the evidence supplied to the court, it was clear that the police had detained the suit motor vehicle with a view to pressurizing the Applicant to reach a settlement in a civil dispute. The civil dispute does not relate to the motor vehicle. The persons who complained to the police are not claiming the motor vehicle. The dispute appears to be in respect of some agreement for the purchase of land. This court is of the view that, prima facie, the Applicant has established that his right to enjoy his property under **Article 40(1)** of the **Constitution** has been infringed by the action of the police. The police are ordered to unconditionally release the motor vehicle to the Applicant. If there is any criminal charge to be brought against the Applicant, the police shall be at liberty to bring the same to court. It is so ordered.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER 2014.**

**L. KIMARU**

**JUDGE**