



REPUBLIC OF KENYA

High Court of Kisii

Constitutional Petition 42 of 2012

NO.762

**IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23 (3), 27, 40 (1), 47(1) & 47 (2), 48 AND 50 OF
THE CONSTITUTION OF KENYA, 2010**

IN THE MATTER OF EQUALITY BEFORE THE LAW AND RIGHT TO PROPERTY

**IN THE MATTER OF SECTION 19 OF THE SIXTH SCHEDULE OF THE CONSTITUTION
OF KENYA, 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION &
PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)
HIGH COURT PRACTICE AND PROCEDURE RULES, 2006**

BETWEEN

JACINTA WANJIRU KAMAU PETITIONER

VERSUS

THE DISTRICT CRIMINAL INVESTIGATION

OFFICER, KISII COUNTY 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Petitioner herein, Jacinta Wanjiru Kamau filed her petition dated 20th November 2012 on the 22nd November 2012. The Petitioner's complaint revolves around motor vehicle Registration Number KBG 036 F which was admittedly seized by the Respondent on or about 17th October 2012 and has since remained or been kept at the Kisii Police Station. The Petitioner contends that the detention of the said motor vehicle by the Respondent is without just cause and therefore prays that:-

(a) A declaration do issue that the detention of motor vehicle registration NO. KBC 036F at Kisii Police Station is illegal and unconstitutional.

(b) The respondents be condemned to pay exemplary damages for trespass upon private property, that is, motor vehicle registration NO. KBG 036 F and be further condemned[to pay]general damages for the illegal capricious deprivation of the Petitioner's right to hold, enjoy and use that motor vehicle bearing

registration NO. KBG 036 F, as may be assessed by this honourable court.

(c) Costs of and incidental to this petition be borne by the respondents in any event.

(d) The honourable court be pleased to issue such further orders as may be deemed expedient.

2. Contemporaneously with the petition, the petitioner filed a chamber summons seeking ORDERS THAT:-

(a) This application be certified urgent and service thereof be dispensed with in the first instance and the same be heard *ex parte* in the first instance for grant of a temporary order in terms of prayer (b) herein.

(b) This application be fixed for hearing on priority basis.

(c) Pending the hearing *inter partes* and determination of the substantive petition an order of mandamus do issue directing the District Criminal Investigation Officer, Kisii County and any such officer(s) and/or person(s) acting howsoever under his authority or otherwise to forthwith release to the petitioner that motor vehicle bearing registration No. KBG 036F.

(d) The petitioner be at liberty to apply for any and/or such further orders as may be expedient in enforcement of the orders of this honourable court.

(e) Costs of this application do abide the substantive petition.

3. The grounds supporting the application are set out on the face of the application and are also found in the affidavit in support sworn by the petitioner on 20th November 2012 and the annexures thereto. The petitioner contends therein that she is the bonafide registered proprietor of motor vehicle registration number KBG 036F, which vehicle she has held since December 2007. On 17th October 2012, the 1st Respondent caused the Petitioner to deliver the said motor vehicle to Kisii police station and has since the said date continued to have the same detained thereat for no legal reason. The petitioner avers that the continued detention of the said vehicle at Kisii police station is a consequence of caprice, abuse of office and slovenly discharge of duty on the part of the 1st respondent and is an affront to the applicant's constitutionally protected proprietary rights, hence these proceedings.

4. The application is opposed vide the Replying Affidavit filed on 26th February 2012 sworn by Mr. Erastus Nzau, the investigating officer in this matter.

5. With the leave of the court, the petitioner filed a Supplementary Affidavit sworn on 6th March 2013. The petitioner avers that the Respondents do not deny that she applied for and obtained a duplicate logbook for the subject motor vehicle upon submitting the vehicle to the CID – Kisii for the lifting of the motor vehicle chassis and Engine Numbers; that the duplicate logbook was issued on the strength of the Report of Examining Officer after the CID themselves had lifted chassis and Engine Numbers off the motor vehicle. The petitioner also dismisses the averments by deponent of the Replying Affidavit that one can tell simply by looking at the registration plate of a vehicle that such a plate does not match the vehicle's physical features. The petitioner further avers that having been furnished with all the details sought for and pertaining to the subject motor vehicle, and having issued the petitioner with a duplicate logbook based on such particulars the 1st Respondent had no justification for detaining the subject motor vehicle nor does he have such justification to continue to do so.

6. The petitioner also states in her Supplementary Affidavit that her husband one John Ng'ang'a Wathika has proprietary rights over the subject motor vehicle, which information has been well within the 1st Respondent's knowledge and should not be a reason for detaining the motor vehicle, and that if the motor vehicle was the proceeds of a theft then a complaint would have been lodged with and investigated by Interpol to the satisfaction of both the 1st respondent and the Registrar of Motor Vehicles. The petitioner prays that the orders sought by herself be granted as prayed.

7. On the 7th March 2013, counsel appearing agreed to canvass the application by way of written submissions. The respective submissions have since been filed and I have had the opportunity to carefully read each set. The advocates highlighted the submissions when the matter came up for hearing on 16th April 2013.
8. Mr. Nyamurongi of Nyamurongi & Co. Advocates submitted that the excuse given by the Respondents for not releasing the motor vehicle to the petitioner, namely that the matter is still under investigation cannot be true because the purported communication with Singapore has in fact been with the CID office in Nairobi and that in any event the request to the CID in Nairobi was made some two months after the subject motor vehicle had been seized.
9. Counsel submitted that the purported investigations were a mere smokescreen intended to deprive the petitioner of her proprietary rights in the motor vehicle and that the act of impounding the petitioner's motor vehicle for such a long time is contrary to the provisions of **Article 47 (1)** of the **Constitution** which entitles every person to expeditious efficient, lawful reasonable and procedurally fair administrative actions by state officials. Counsel further submitted that the actions of the respondents were also a contravention of **Article 42** of the **Constitution**. However, **Article 42** seems irrelevant to the petitioner's case because it provides that all persons have a right to a clear and healthy environment and to have obligations relating to the environment fulfilled under **Article 70**.
10. The Respondents were represented by Mr. S.O. Nyauma, Litigation Counsel, who submitted that the 1st Respondent was and is still carrying out its mandate of investigating crimes in connection with the subject motor vehicle. He submitted that the letter dated 10th December 2012 was part of the local investigations while a request to Singapore would be part of the international investigations. It was contended that once the multi-pronged investigations are complete, the Respondents will release the motor vehicle to the rightful owner. It was counsel's contention that both the petition and the chamber summons are premature and that the same should be struck out.
11. In reply, Mr. Nyamurongi submitted that there was no evidence from the Respondent showing that the purported international investigations were ongoing. It was counsel's view that the time to release the petitioner's motor vehicle was now and he urged the court to do so.
12. After considering the written submissions and hearing counsel in open court, the issues that arise for determination are in terms of prayers (c) - (e) of the chamber summons dated 20th November 2012. In other words, has the petitioner proved to the satisfaction of this court that there is no justification for the respondents' actions, and if so, who should bear the costs of this application?
13. In my considered view, the petitioner has proved her case. She has shown that at the time of seizure of her vehicle, the 1st Respondent did not have any grounds for the seizure and that subsequently, the 1st respondent has not given any reasons for detaining the subject motor vehicle. The petitioner had obtained a duplicate of the logbook after the 1st respondent was given an opportunity to strip the motor vehicle for the details of the Chassis and Engine numbers; and a report prepared after stripping indicated that there had been no interference with the Chassis and Engine Numbers.
14. The above being the position, and the fact that the petitioner has availed documents to the court to support her contention that she had nothing to hide as far as the subject motor vehicle was concerned, I find no merit in the Respondents' contention that investigations are still ongoing. Further, there is no indication by the Respondents as to when these ongoing investigations are going to come to a close. There is no evidence by the Respondents that complaints have been made to them in respect of the subject motor vehicle or that the petitioner has been found to have committed an offence in connection with the said motor vehicle so as to warrant the detention of the motor vehicle.
15. In my considered view also, the respondents are not serious about the purported investigations into this matter. If there had been such discrepancy over the Engine Number between details on the Logbook and what Mr. Erastus Nzau said he found out when he stripped the motor vehicle, then there would have

been some urgency in concluding the matter. How much more time should the respondents have to enable them conclude the investigations? There is no hint by the Respondents as to how much more time they think they need. I do not think that the conduct of the Respondents as far as the investigations in this matter is concerned accords with the constitution. The Respondents have not acted in a manner to show that they are upholding the tenets of good governance, integrity, transparency and accountability as provided under **Article 10 (2) (b)** of the **Constitution**. The respondents are also generally in breach of the provisions of the Bill of Rights and in particular, they are in contravention of **Articles 40 (1)** and **41 (1)** thereof, and because the respondents have failed to demonstrate to this court that they are working within certain timelines, it may very well be true as submitted by counsel for the petitioner that the purported “need for verification” could be **“a cover up for caprice on the part of the police.”**

16. Being thus satisfied that there is no basis for the continued detention of the petitioner’s motor vehicle, I allow the chamber summons dated 20th November 2012 and order that pending the hearing and determination of the substantive petition, the District Criminal Investigation Officer, Kisii County and any such officer(s) and/or person(s) acting howsoever under his authority or otherwise do forthwith release to the petitioner that motor vehicle being registration Number KBG 036F. The petitioner is at liberty to apply for any and/or such further orders as may be expedient in the enforcement of the order for the release of the subject motor vehicle. The costs of the application shall abide the outcome of the substantive petition.

17. It is so ordered.

Dated and delivered at Kisii this 23rd day of May, 2013

RUTH NEKOYE SITATI
JUDGE

In the presence of:

Mr. Nyamurongi (present) for Petitioner/Applicant

Mr. Nyauma (absent) for Respondents

Mr. Bibu - Court Clerk