



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISCELLANEOUS CRIMINAL APPLICATION NO. 507 OF 2012

NAWASUKU SAVINGS AND CREDIT

COOPERATIVE SOCIETY LTDPETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT

THE D.T.O. NAIROBI AREA POLICE STATION.....2ND RESPONDENT

THE CHIEF MAGISTRATE MILIMANI

LAW COURTS.....3RD RESPONDENT

RULING

1. In the Notice of Motion dated 16th day of October 2012, the petitioner seeks *inter alia* that this honourable court do order stay of execution of the order granted by Hon. E. Nduva (SRM) issued on the 27th day of September 2012. He relies on the grounds on the face of the application and the annexed affidavit of Patrick Irungu Kimani in support of the application.
2. The said orders arose from **Traffic cause No. 17211 of 2011** wherein the accused person is Michael Burugu Kahatha as evinced by **PIK** (the charge sheet). The accused person was charged pursuant to **rule 65A** of the **Traffic Amended Rules Cap 403** laws of Kenya whose provision states as hereunder:-

Rule 65A (1): “with effect from 31st December, 2003, every driver and every conductor of a public service shall wear a special badge and uniform.”

The Applicant prays that this court do stay the said orders pending the hearing and determination of the petition.

Respondent’s Case

3. M/s Stella Nyamweya, learned stated counsel submitted on behalf of the 1st Respondent and

opposed the application. She set out the brief facts of the circumstances that gave rise to the application and contended that the law was followed to the letter and that no right had been infringed upon. She prayed for the dismissal of the petition in its totality.

Back ground Facts

4. The Petitioner is the employer of the accused person in **Traffic case No. 17211 of 2012**, Michael Burugu Kahatha. It was stated that on 10th September, 2012 at around 11.00 a.m. along Latema Road within Nairobi County, Patrol Officers on duty detected a motor vehicle Registration number **KBS 615Z** Isuzu Minibus heading towards River Road direction from Tom Mboya Avenue within Nairobi being driven by a driver who had no uniform. The said driver was arrested and ordered to take the passengers to their destinations and then present himself to court. The motor vehicle was impounded when the driver did not present himself to court.
5. Thereafter the petitioner herein went to court seeking to have the motor vehicle released to him. The court granted the orders sought on condition that the petitioner provides the following:
 - a. The records of employment of the driver.
 - b. A bond to avail the driver within a given time and in default a warrant of arrest to be executed against him.
 - c. The bond terms to be provided by the D.T.O. in the respective station.
6. The question for determination is therefore, whether the orders issued by the learned magistrate M/s. E. Nduva, Senior Resident Magistrate on 27th September 2012 were unconstitutional and infringed on the petitioner's rights.
7. The said orders required that the petitioner avails the documents pertaining to his employee one Michael Burugu Kahatha, which cannot be said to be an infringement to the petitioners Rights and Freedoms? The requirement that every employer should have the identification documents of his or her employees is a legal one.
8. In these circumstances **Section 110** of the **Traffic Act Cap 403** provides that owners of motor vehicles and any other person who is able to provide such information shall, as soon as reasonably possible and in any case within seven days after having received a verbal or written request for such information, give such information as he may be required by a police officer to give, as to the identity of the driver of such vehicle. The owner is therefore required to keep particulars of their employees.
9. **Section 107** of the **Traffic Act** provides for the detention of vehicles whose drivers have committed a traffic offence. When the motor vehicle in issue was stopped and the driver found to have committed an offence, he was allowed to ferry the passengers and given notice to attend court. When he failed to do so the natural consequences were that the motor vehicle should be impounded. It is the duty of the owner of the motor vehicle to provide the particulars of his driver. One year down the line there is no evidence that the petitioner complied with the orders of the court. It is noteworthy that the particulars of the errant driver are not attached to the petition before me even if, as alleged, the said driver has since left employment.
10. The Constitution does not exist in a vacuum but is a bedrock of the rule of law. The petitioner has guaranteed rights under the constitution but he also has corresponding duties. If he is in violation of existing laws he cannot hide behind perceived infringement of his rights as an excuse. In the circumstances of this case **Section 111** of the **Traffic Act** provides that:

**“(1) Any person who employs any other
person to drive a motor vehicle shall
keep a written record of the name,**

address and driving licence number

of such other person.

2. **Such record shall be preserved for a period of six months after the date when such person ceases to be employed as a driver, and shall be made available to any police officer on demand.**

3. **Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.”**

11. In any case I agree with the statement of **Trevelyan & Hancox JJ**, in the case of **Anarita Karimi Njeru v Republic [1976-80] 1 KLR pg. 1275**, to which I have been referred by Miss Nyamweya and stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case), that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed. This, the Petitioner has failed to do, and I cannot comprehend in what manner the court can assist him, if all he is making are vague allusions to the infringement of unspecified constitutional rights.

12. For the foregoing reasons, the application is found to be unmeritorious and is dismissed.

SIGNED DATED and DELIVERED in open court this **28th day of November 2013**.

L. A. ACHODE

JUDGE