



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

HCCR. MISC. APPL. NO.22 OF 2011

DAVID AWORI.....APPLICANT

VS

REPUBLIC.....RESPONDENT

JUDGMENT

The Applicant alleges that he was arrested on 6/8/2003 by CID Officers from Bungoma following which he was taken to his house at Kanduyi. The officers included sergeant Harrison Odhiambo F/no.63904, P. C. Sitati and P. C. Okoth. The house was searched and the officers took from there the following items:

- a) Sony 3 CD Changer (new),
- b) Sony handy video camera (new),
- c) 3 grill gas cooker (used),
- d) Sony T. V. 14 in. (used),
- e) Sony DVD deck (used),

- f) Phillips microwave (used),
- g) Clothes and beddings (used),
- h) 3 personal photo albums and documents,
- i) Cash 3000 USD,
- j) Cash Ksh.85,000/=,
- k) One wrist watch make Rado worth Ksh.15,000/= and
- l) One Samsung mobile phone worth Ksh.26,000/=.

The items have since not been used as evidence in any case and neither have they been claimed by any person. He swore that these were his property.

This motion was filed under Article 40 (1), (2) and (5) and Article 165 of the Constitution of Kenya 2010 and Rules 16 and 23 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006 seeking an order for the return of the seized goods by the CID at Bungoma. It further sought direction as to how the CID were going to surrender the items.

The Respondent, who was represented by Mrs. Leting of the Director of Public Prosecutions, was served but did not respond. The facts deponed to by the Applicant were therefore not controverted. The court accepts those facts to represent what happened.

The named items were the property of the Applicant. Under Article 40 (1) of the Constitution he was entitled to acquire and own the same. Under Article 40 (3) the State cannot deprive the Applicant of the property. The State did not defend the application to say what motivated the CID officers to take the property, or whether that taking was permissible.

Police officers investigating a case of theft may recover any suspected stolen property. If what was stolen was money, for instance, they may recover any property suspected to have been bought using the

money. Any recovered property is taken to the police station as part of evidence against the suspect. When the suspect is charged such property will be produced during the trial. Subsequent to the trial, the court will be asked to make an order regarding the disposal of such property. When a police officer recovers property in the course of investigations and it turns out after such investigations that such property is irrelevant to the matter, or the person found with the property has given a reasonable account of the possession, the property should immediately be returned to the owner.

In this case, CID officers took the Applicant's property at his house following his arrest. No person laid claim to the property. He was not charged in connection with the property. The property has not been returned to him. The action of the CID officers was, in the circumstances, arbitrary deprivation of the Applicant of his property. The action was unconstitutional. Because the officers were acting in the name of the State, I order the Respondent to return these items to the Applicant within 90 days from today. If that is not done, the Applicant will come back to this court with proof of the value of the items so that an appropriate order of compensation is made. I ask that costs of the application be borne by the Respondent.

Dated, signed and delivered at Bungoma this 19th day of March, 2012.

A. O. MUCHELULE

JUDGE