



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL SUIT 216 OF 2011**

**EURO PETROLEUM PRODUCTS EA LIMITED.....PLAINTIFF**

**VERSUS**

**1. THE ATTORNEY-GENERAL**  
**2. THE COMMISSIONER OF POLICE**  
**3. MUGA NYALI .....DEFENDANTS**

**R U L I N G**

1. The Plaintiff has pleaded in its plaint dated 17<sup>th</sup> June 2011 that it is the registered owner of motor vehicle registration number KBJ 047J, Mercedes Benz MC 280 station wagon; that on or about 1<sup>st</sup> March 2011 the Defendants impounded the motor vehicle and have since held it at Nairobi Area Police Station without any explanation; that the Plaintiff's title to the said motor vehicle has never been the subject of any criminal, traffic or civil proceedings in any court or tribunal in Kenya; that the Defendants have not preferred any criminal, traffic or other charges in challenge of the Plaintiff's title to the motor vehicle; that the Plaintiff's motor vehicle continues to depreciate in value; and that the Defendants' action of impounding and detaining the motor vehicle is contrary to law and in breach of the Plaintiff's constitutional right to own and hold property. A declaration to that effect is sought.

2. The Plaintiff also seeks an order for release of the motor vehicle to it, plus damages, costs and interest.

3. The Defendants filed a statement of defence dated 12<sup>th</sup> July 2011. They deny that the Plaintiff is the registered owner of the suit motor vehicle. But they admit impounding and detaining the motor vehicle "because it was suspected to be stolen and investigations are going on". They seek dismissal of the Plaintiff's suit with costs.

4. Together with the plaint the Plaintiff filed **notice of motion dated 17<sup>th</sup> June 2011** which is the subject of this ruling. The application, brought under **section 1A** of the **Civil Procedure Act, Cap 21 (the Act)**, seeks the main order that pending disposal of the suit the Defendants be ordered to release the suit motor vehicle to the Plaintiff. There is a supporting affidavit annexed to the application. It is sworn by

one PETER NDOLO KILONZO, a director of the Plaintiff. A number of documents are annexed to this affidavit.

5. The Defendants opposed the application by replying affidavit filed on 13<sup>th</sup> July 2011. It is sworn by the 3<sup>rd</sup> Defendant. The grounds of opposition emerging therefore are-

(i) That the 3<sup>rd</sup> Defendant received “leads” that the suit motor vehicle was stolen from Great Britain in the year 2007 and was initially used in Tanzania.

(ii) That investigations are going on as to how the motor vehicle was imported into and registered in Kenya.

(iii) That there are many reports of motor vehicles stolen outside Kenya and subsequently imported into and registered in Kenya.

6. The application was canvassed by way of written submissions, which I have read, together with the cases cited.

7. The Plaintiff is the registered owner of the suit motor vehicle in Kenya. The Defendants have challenged that ownership upon “leads” received by the 3<sup>rd</sup> Defendant to the effect that the motor vehicle was stolen in Britain in the year 2007, subsequently registered and used in Tanzania, and then imported into and registered in Kenya.

8. The motor vehicle was impounded and detained on 1<sup>st</sup> March 2011. More than one year and nearly four (4) months later the Defendants say they are still investigating to see how it was imported into and registered in Kenya. Apart from the 3<sup>rd</sup> Defendant’s say-so, there are no documents annexed to the replying affidavit to indicate the nature or direction of these investigations, or when they are likely to come to an end. Are they supposed to go on indefinitely?

9. No charges or other legal proceedings in connection with the suit motor vehicle have been brought against the Plaintiff. No notices of intention to bring such charges have been served. *Prima facie*, the Defendants have had sufficient time to complete their investigations.

10. Motor vehicles stored unused can deteriorate very rapidly. There is also danger of vandalism.

11. Though the court will usually be reluctant to grant an interlocutory application whose effect will be to determine the suit unheard, in the present case the dictates of justice demand that that suit motor vehicle should be released to the Plaintiff. Appropriate conditions for grant of this order will ensure that the subject-matter is preserved pending disposal of the suit.

12. I therefore order that the suit motor vehicle **registration number KBJ 047J** be forthwith released by the Defendants to the Plaintiff pending disposal of the suit upon the following conditions -

(a) The Plaintiff shall not sell, part with possession or otherwise dispose of the motor vehicle without the further order of this court.

(b) The suit motor vehicle shall not at any time be driven out of Kenya.

(c) The Plaintiff shall, once every two weeks, take the motor vehicle to CID Headquarters, Nairobi for verification that it is still available.

13. Costs of the application shall be in the cause. It is so ordered.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JUNE 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JUNE 2012**