

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Criminal Application 497 of 2012

JAMES OMARE OINO APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

This is an application by way of Notice of Motion under Sections 354 (d) and 144 (1) of the Criminal Procedure Code and Articles 40 (1) and 159 (2) (d) of the Constitution seeking orders that the subject matter of a pending appeal be preserved and that summons be issued to the investigating officers Mr. Isa Mohamed and Justus Munyasia attached to Embakasi Poice Station to confirm the current status of the subject matter of the appeal.

The grounds upon which this application is based are set out on the face of the application alongside an affidavit sworn by James Omare Oino. The application is opposed by the Republic and also the interested party who came on board on learning of the lodging of this application.

The court having made an order that the application be addressed by way of written submissions all parties herein complied. I have gone through the submissions and heard the learned counsel on record. Apart from the present application, there is HCCC no. 268 of 2011 and High Court petition No. 349 of 2012. In all these cases, there are conflicting interests expressed by the parties in respect of the disputed property. This property comprises of several Motor Vehicles.

In the submissions filed, it is clear there is required more information, probably by way of oral evidence to determine the central issues. It will be extremely prejudicial to delve into the issue of ownership of the subject matter at this stage as appears to have been addressed by the learned counsel appearing for the parties herein.

I have also restrained myself from addressing the issue of whether or not this matter lies in the civil or criminal jurisdiction. This is because the end result would still be the same and so, considering the pendance of the litigation I have cited hereinabove, I consider it fair and just to make an order to preserve the subject matter pending the hearing and determination of the above cases whichever comes first. It is prudent to summon the officers cited in prayer No. 3 of the Notice of Motion because they may be holding the key to the resolution of this dispute.

Summons shall accordingly issue to the two officers to appear in court on a date to be agreed among the parties herein to shed light as prayed. The costs of this application shall be in the cause.

Orders accordingly.

Dated and delivered at Nairobi this 29th day of November, 2012.

**A. MBOGHOLI MSAGHA
JUDGE**

