



REPUBLIC OF KENYA

High Court at Nakuru

Revision Case 397 of 2012

FRANCIS OGOTI OTUNDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION ORDER

Francis Ogoti Otundo faces the following charges before the Chief Magistrate's Court, Nakuru:-

- 1. Stealing motor vehicle contrary to Section 278A of the Penal Code;**
- 2. Making a document without authority contrary to Section 357(a) of the Penal Code;**
- 3. Uttering a false document contrary to Section 353 of the Penal Code.**

This case is partly heard before Hon. F. Kombo (Principal Magistrate). At the centre of the controversy is motor vehicle registration number KAX 751C. It seems that during the hearing of this matter, the question has arisen as to whether the motor vehicle can be released to one of the parties. I have seen the quorum on record, apart from the trial magistrate, is the prosecutor IP Chacha, Mr. Musembi for an Interested Party, Mr. Mongeri watching brief for the complainant and Mr. Cheche for the accused. On 24/10/2012, the court adjourned the matter to 7/9/2012, for submissions to be made by the parties on whether or not the vehicle should be released and to who it should be released.

In a criminal case, the prosecutor represents the Attorney General on behalf of the State. An advocate watching brief for the complainant has no role in the prosecution of the case and cannot therefore address the court on how to determine a particular issue. On the other hand, an Interested Party is not known to criminal proceedings. The two counsel watching brief for the complainant and Interested Party can only speak through the prosecutor, and their duty is to ensure that justice is done to those they represent. **Article 50(7) of the Constitution** provides that in the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court. I believe that if the complainant or accused person is unable to articulate or explain herself well, then an intermediary can be allowed to do so. That is how far an intermediary can go, but such persons cannot throw themselves into the arena of determining how the court will deal with an exhibit. Such submissions must be left to the prosecutor and the counsel for the accused person. This is not a private prosecution and if the court were to allow strangers into the case, it will be a muddle and the ends of justice may not be met. For that reason, I revise the order of Hon. Kombo, Principal Magistrate, dated 24/10/2012, allowing counsel for an "Interested Party" and counsel watching brief for the complainant to submit on the release of the subject motor vehicle. I direct that only the prosecutor and accused's counsel should do so. It is so ordered

DATED and DELIVERED this 14th day of November, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

N/A for the State

N/A for the complainant

Mr. Musembi for the Interested Party

Kennedy – Court Clerk