REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 304 of 2012

ELAM NGASE LUMWANJI ..... PETITIONER

AND

COMMISSIONER OF POLICE ..... 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION ..... 2ND RESPONDENT

AND

FRANK KINYA KIONI ……...… INTERESTED PARTY

JUDGMENT

1. It is not in dispute that the petitioner is an auctioneer and he was instructed to levy distress upon one Wahome Maina on instructions of Real Management Services (2002) Limited. The Auctioneer carried out the instructions and sold the motor vehicle in a public auction in accordance with the procedures required.

2. The interested party purchased the subject motor vehicle registration number KBA 562V at the auction and as a consequence he claims he is the owner. He has filed a Notice of Motion dated 2nd August 2012 in which he seeks an order that motor vehicle KBA 562V be released to him.

3. This matter was reported to the Police by the actual owner of the motor vehicle, Hassan Aswadh Bayusuf Ashraf, and as the auctioneer feared that he would be apprehended and charged with theft of the motor vehicle he filed this petition to forestall that possibility. According to Mr Njogu, counsel for the respondents, the vehicle has now been released to the custody of the police and the police are no longer interested in the petitioner.

4. In view of the concession by the respondents, it is unnecessary for me to grant the orders in the petition and in any case I find that for the purposes of these proceedings, the auctioneer was carrying out his official function *qua* auctioneer.

5. The only issue is whether I should grant the interested party's application. This case is one for enforcement of fundamental rights and freedoms under **Article 22** and once I have disposed of the petitioner's grievance, I have no jurisdiction to embark on settlement of other issues of a civil nature unconnected with the violation of the petitioner's fundamental rights and freedoms.

6. In any event, the motor vehicle is now subject to civil proceedings to wit: ***CMCC 3609 of 2012 Milimani, Hassan Awadh Bayusuf Ashraf v Domicile Auctioneer Services and Real Management***

Services (2002) Limited. If the interested party has an interest in the motor vehicle, he should join the said suit for determination of that interest. In the circumstances, the interested party's Notice of Motion dated 2nd August 2012 is dismissed.

7. These then, are my final orders;

(1) As the respondents concede that the petitioner will not be charged or arrested the petition is marked as settled with no order as to costs.

(2) The interested party's Notice of Motion dated 2nd August 2012 is dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 17th day of December 2012.

D.S. MAJANJA

JUDGE

Ms Rashid instructed by Betty Rashid and Company Advocates for the petitioner.

Mr Njogu, State Counsel, instructed by the Director of Public Prosecutions.

Mr M. Obura, instructed by Meshack Okoth Obura and Company Advocates for the interested party.