



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW CASE NO. 330 OF 2010

REPUBLIC.....
.. APPLICANT

VERSUS

**OFFICER IN CHARGE – FLYING SQUAD POLICE DIVISION HEADQUARTERS
PANGANI1ST RESPONDENT**

THE COMMISSIONER OF POLICE..... 2ND
RESPONDENT

EX PARTESOY
AFRIC LIMITED

RULING

The ex parte applicant filed an application dated 23rd November, 2010 and sought an order of prohibition directed to the respondents, its officers and/or agents to restrain them from taking possession, towing away, seizing or taking custody of motor vehicle registration number KAZ 609V, Mitsubishi L-200, Chassis No. BAVJNK1406P151463 from the applicant or its agents or in any manner interfering with the applicant's quiet possession, control and usage of the same. In an affidavit in support of the application sworn by **Cornelius Muthuri**, the applicant's Managing Director, that the applicant is the registered owner of the said lorry, having purchased the same from one **John Kioko Kyania** on 9th August, 2010. A copy of the sale agreement, transfer form, log book and a copy of records from the Kenya Revenue Authority were annexed to the affidavit.

The applicant further stated that since 29th September, 2010 police officers from Pangani Police Station, Flying Squad Division, had been visiting his premises and that the lorry be handed over to them for undisclosed reasons. The police seemed to be acting on the instigation of one Robinson Kariuki Runyenjes, a former employee of the applicant who had been sacked for gross misconduct. The said former employee had earlier instigated an attachment of the lorry by Beyond Auctioneers who purported to act on instructions of one Mr. Tajdin Habib Noorallah, but upon investigations the said Auctioneer denied ever having been given such instructions. The vehicle was then released.

That notwithstanding, the police were adamant that the lorry must be handed over to them. Mr. Muthuri pointed out there was a small typographical error on the log book in that the registered owner of the lorry was shown as **Soy Africa Limited** instead of **Soy Afric Limited**.

Patrick Kitonyi, a police officer number 47105, Acting Inspector, attached to flying squad unit, Pangani, swore a replying affidavit. He stated that on 31st May, 2010 a complaint was lodged by one Tajdin Habib Noorallah regarding loss of the said lorry. The report was made at Ruaraka Police Post. On 23rd September, 2010 one Mr. Robinson Runyenjes reported to the police that while he was driving the said lorry he was confronted by a group of about 8 men at Ndumberi Township who took away the motor vehicle claiming to be auctioneers. On the following day the said Mr. Habib reported to the flying squad that he had been informed by the auctioneers whom he had contracted to look for and impound the vehicle that it had been impounded and was being detained at the auctioneer's yard at Pangani. The complainant said that he was the joint owner of the motor vehicle with Imperial Bank who had financed its purchase, he was still servicing the loan and the original log book was in the custody of the bank.

Acting Inspector Kitonyi commenced investigations by visiting the bank which confirmed the allegations of the complainant. He also visited the office of the Registrar of Motor Vehicles and found that the motor vehicle is registered in the name of the applicant. The motor vehicle has two different log books. Thereafter he had severally visited the applicant's premises but Mr. Muthuri had evaded him and had also caused the motor vehicle to be hidden.

The police officer added that the applicant's human resources officer, one Mr. Kennedy Ngigi, presented himself at Pangani Police Station on 27th November, 2010 and the police explained to him the grounds upon which they were looking for the motor vehicle. The police also informed the applicant's advocate, Mr. David Kirimi. It is not therefore true that the applicant does not know why the police are after the said lorry, Kitonyi stated. He added that the lorry had been sold fraudulently because investigations had shown that there is no transfer form from Noorala Tajdin Habib jointly with Imperial Bank to John Kioko Kyania who allegedly sold it to the applicant. The police are looking for the said Kyania but he has gone underground.

The parties filed their respective submissions and both Mr. Kirimi for the applicant and Mr. Tanni for the respondent made brief oral submissions.

Judicial review orders are discretionary remedies which can be granted in the following instances:

- (a) **where a decision is made in excess of jurisdiction;**
- (b) **where a decision is made without jurisdiction;**
- (c) **where a decision is made in contravention of the law; and**

(d) where a decision is made in contravention of the rules of natural justice.

In this matter, the applicant alleges that the respondents are acting in excess of their jurisdiction and/or abusing their powers by harassing him unnecessarily and interfering with his business in their quest to take into their possession his motor vehicle for reasons unknown to him. On the other hand, the police have stated the reasons why they are keen on having the said motor vehicle. They are investigating a complaint made to them by Nooralah Tajdin Habib.

It is not for this court in a judicial review matter to determine who the rightful owner of the motor vehicle is. That can be done in an ordinary civil suit. What this court is mandated to do in the matter before it is to determine whether there are valid and sufficient grounds for granting the order of prohibition sought by the applicant.

Part III of the Police Act Cap 84 Laws of Kenya sets out the duties and powers of the Police Force. Such duties include maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders and enforcement of all laws and regulations with which it is charged. When a person makes a complaint to the police regarding loss or unlawful dispossession of his property, it is the duty of the police to carry out thorough investigations and take the appropriate action in the circumstances of the case.

Whereas the applicant has exhibited various documents in an effort to show that he lawfully acquired the motor vehicle from one John Kioko Kyania, from the contents of the affidavit sworn by Acting Inspector Kitonyi, it appears that the said John Kioko Kyania may not have lawfully acquired the said motor vehicle. The police are therefore obliged to investigate the matter thoroughly. They cannot do so without interrogating all the people concerned including Cornelius Muthuri who signed the sale agreement on behalf of the applicant, Mr. John Kioko Kyania, the seller, Tajdin Habib Noorallah and all other relevant persons. The police also require to see the motor vehicle in question, look at its Chassis number, Engine number and such other relevant details. They also need to look at all the relevant documents relating to the vehicle including the log book(s), transfer forms, Kenya Revenue Authority records, etc.

There is evidence that the applicant's Human Resources Manager and the applicant's advocate have been duly informed by the police why they want to record a statement from Mr. Muthuri and have possession of the lorry so as to complete their investigations.

An order of prohibition cannot issue to prevent performance of statutory duty unless it is demonstrated that in such performance the respondent has exceeded his powers, which is not the case here. The applicant has a civil duty to co-operate with the police in their investigations if his acquisition of the motor vehicle was lawful as stated in his affidavit.

Having come to the conclusion that the respondents have not acted in excess of jurisdiction, the order of prohibition as sought cannot be granted. The Notice of Motion dated 23rd November, 2010 is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH, 2011.

D. MUSINGA

JUDGE

In the presence of:

Nazi – court clerk

Mr. Kirimi for the applicant

Mr. Tanui for the respondents