



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CORAM: F. AZANGALALA J.

HC.CRIMINAL APPEAL NO. 24 OF 2007

BETWEEN

RAEL CHEROP MARITIM.....APPELLANT

AND

REPUBLIC.....RESPONDENT

RULING

By her notice of motion dated 18th March, 2011, the appellant, **Rael Cherop Maritim**, seeks one main order of the court that the D.C.I.O., Uasin Gishu District be ordered to release forthwith motor tractor Registration Number KZQ to her. The application is made under section 177 (a) of the Criminal Procedure Code, Article 40 of the Constitution and any other enabling provisions of the Law. The main reasons for the application are as follows:-

- (1) That the appellant's appeal was allowed;
- (2) That the said tractor was the subject matter of the criminal case and has since been in the custody of Eldoret Police at Eldoret Police Station;
- (3) That the state counsel has advised the DCIO to release the said tractor but the latter has failed to heed the advice;

- (4) That an order of this court for the DCIO to release the said tractor is necessary;
- (5) That the application is made in good faith;
- (6) That it is fair and just that this application be made.

The application is supported by an affidavit sworn by the appellant. In the affidavit, the appellant has reiterated the above grounds. Annexed to the affidavit is a copy of the judgment in this appeal and two letters addressed to the DCIO advising him to release the said tractor. The application was served upon the state counsel, Eldoret who neither served grounds of opposition nor replying affidavit.

When the application came up before me for hearing on 13th April, 2011, **Mr. Kiboi**, learned counsel represented the appellant and **Mr. Kabaka** appeared for the state. **Mr. Kiboi** urged that I allow the application as prayed in view of the acquittal of the appellant. **Mr. Kabaka** did not oppose the application.

I have considered the application and the supporting affidavit. I have also perused the record. Having done so, I take the following view of the matter. The appellant's appeal was allowed on the primary ground that her prosecution was conducted by an incompetent prosecutor. The appeal did not determine the ownership of the subject tractor. The judgment herein is therefore not a basis for making any orders regarding the ownership of the tractor. An order by this court ordering release of the tractor may very well be interpreted as conferring upon the appellant title to the same. The proceedings before the Lower Court suggest that the complainant therein, alleged joint ownership of the tractor. A determination of the issue may have to await a determination of the civil cases mentioned in the proceedings.

In the premises, before a decision on the appellant's application may be made, it would be in the interests of justice that the said complainant be served with this application. The state was merely a nominal party. It has no proprietary interest in the tractor.

The application will therefore be heard afresh on service upon the said complainant.

Costs shall abide the results of the application.

It is so ordered.

DATED AND DELIVERD AT ELDORET THIS 19TH DAY OF MAY 2011.

F. AZANGALALA

JUDGE.

Read in the presence of:-

- (1) **Mr. Kiboi** for the applicant
- (2) **Mr. Chirchirchir** , holding brief for **Mr. Kabaka** for the State.

F. AZANGALALA

JUDGE

19/5/2011