

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. APPLICATION NO. 57 OF 2010

IN ACCORDANCE WITH ORDER L.III RULE 1 OF CIVIL PROCEDURE
RULES
AND
IN THE MATTER OF: POLICE ACT CAP 84 LAWS OF KENYA
AND
IN THE MATTER OF: APPLICATION BY FAZIL HAMED FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW BY WAY
OF AN ORDER OF MANDAMUS

BETWEEN

REPUBLICAPPLICANT

AND

THE COMMISSIONER OF POLICERESPONDENT
FASIL HAMMEDEX PARTE APPLICANT

J U D G M E N T

This is a Judicial Review Application by way of Notice of Motion under the provisions of Order 53, rules 1 and 2 of the Civil Procedure Rules.

The Applicant seeks the following order:-

An Order of Mandamus to compel the Commissioner of Police, the Respondent through the Port Police, Mombasa to release to the Applicant 2 motor vehicles namely (1) Range Rover Sports, Chasis No. SALLSAA 137A997608 Colour Black and (2) Mercedes Benz ML Chassis No. WDC 1641862 A 220668 Colour Black now being detained at the Port Police Mombasa.”

The Application was served on the Commissioner of Police through the Attorney General Chambers. The Respondent did not file any replying Affidavit in opposition or to explain why he had impounded the vehicles from October, 2009 and without any charge being preferred to date.

Counsel for the respondent confirmed to court that despite several letters to the Commissioner of Police and the Police at the Station, there has been no instructions to him.

As a result, I do hereby accept the allegations in the statement to be true and found that the vehicles are being held without any justification and arbitrarily. This is unreasonable and irregular. The applicant has been denied the use of his vehicle and for them to transit and be delivered to Uganda as port of destination.

I hereby allow and grant the prayers sought in prayers 1 and 2. The Respondent shall pay the costs of the application.

Dated and delivered at Mombasa this 29th day of September 2010.

M. K. IBRAHIM

J U D G E

Coram:

Ibrahim, J

Court clerk – Kazungu

Mr. Ondari for the state

Mr. Magolo for the Applicant

Judgment read in their presence.

IBRAHIM, J