

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 1013 of 2005

MEENA SWARN SINGH SODI.....PLAINTIFF

Versus

COMMISSIONER OF POLICE & ANOTHER.....DEFENDANTS

JUDGMENT

In the Notice of Motion dated 12th July 2005, the ex parte Applicant Meena Swarn Sodi seeks an order of mandamus to compel the Commissioner of Police and the officer in charge of Parklands Police station to unconditionally release her motor vehicle Registration No. KAR 426F and all the title documents to the vehicle which are in the Respondents possession. The Application is premised on a statutory statement dated 1st July 2005 and a verifying affidavit of the same date, and another affidavit dated 14th July 2005 and filed in court along with the Notice of Motion on the same date, both sworn by the Applicant.

Though the Respondents opposed the Motion they did not file any reply. Mr. Mokaya appeared for the Applicant whereas Mr. Menge urged the application on behalf of the Respondents. It is the Applicants case that in the month of July 2003, Mr. Abdul Aziz Sidiq imported for her car from the United Arab Emirates, Dubai. She paid Kshs.800.000/= to cover costs of purchase, customs duty and registration fees. It was imported in the name of Abdii Aziz Sidiq. Upon payment of the requisite fees, it was registered as KAR 426F and she took possession of it and on 27th September 2003 the said Abdul Aziz signed a transfer form and gave her and she went to lodge the said transfer form at the Motor Vehicle Registry and the same was duly effected as evidenced by the log Book. On 10th October 2003, a friend of hers, by name Wahid Ali Taib requested to use her vehicle and she allowed him. She however learnt the next day that the said Wahid had been arrested and charged with theft of the said Motor vehicle. She visited Parklands Police Station where he was held and handed over all import documents and transfer documents relating to the said motor vehicle. Later the said Wahid was arraigned before the Chief Magistrate's Court for being in possession of suspected stolen motor vehicle as per the exhibited Charge Sheet 'MSS 20' but after a search with Registrar of Motor Vehicle, it was established that the vehicle was registered in her name. The search is exhibited as MSS 3 the Applicant asked her advocate to follow up the issue of release of her vehicle and the documents but the 2nd Respondent declined to do so claiming they were still investigating (MKS 4) to determine the authenticity of the documents. The said letter from chief Inspector Rono OCS Parklands Police Station is dated 19th November 2003.

At the hearing of this motion it was admitted that subsequent to that letter of Interested Party Rono, the motor vehicle was released to the Applicant but the documents have never been released.

The facts as averred by the Applicant have not been denied by the Respondent as no reply was filed despite the various adjournments granted by this court. Even if the Respondent has the power to detain and investigate, he has no power to detain the documents after the vehicle, the subject of the charges has been released. To make matters worse, those documents have been held since 2003. Can investigations be still ongoing? I doubt that. In any event if they were, then the 2nd Respondent should have come to court to explain that fact. I would agree with the Applicants averments that the continued detention of the documents is unlawful, unjustified and done in bad faith. Demands have been made but there has been no response. I find that an order of mandamus should lie against the Respondents to compel them to release the said documents forthwith and the Respondents will also meet the costs of this application.

Dated and delivered this 9th day of February 2009.

R.P.V. WENDOH

JUDGE

Present:

Mr. Mokaya for Applicant

Daniel: Court Clerk