



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

REVISION CASE 5 OF 2009

REPUBLIC PROSECUTOR

-VERSUS-

- 1. EDWARD OKOTH WERE**
- 2. GEORGE OMONDI RAGEN**
- 3. JARED OBANDE MOSOTI RESPONDENT**

Coram:

Mwera J.

Ms. Oundo for State

N/A for the Accused

Diang'a CC.

R U L I N G

There once came a case NYANDO SRM CR. C. 881/07 wherein the accused persons were Edward Okoth Were, George Omondi Ragen and Jared Obande Mosoti. They were charged with trafficking narcotic drugs on 2.8.2007 along AWASI – FORT TERNAN RD in motor vehicle registration KAN 612 J Toyota Corolla contrary to the “Drugs” Act, No. 4/94 or the Act.

It is not relevant in this revision ruling but suffice it to say that the three were convicted on pleas of guilty and sentenced – accordingly. The lower court also ordered:

” Further in accordance with Section 20 of the said Act the motor vehicle KAN 612 J is hereby forfeited to the State.

But before the court rose, the prosecution told the learned trial magistrate that the motor vehicle KAN 612 J be released to C.I.D Embakasi Kajiado for purposes of prosecution in a case of robbery with violence that occurred in June 2007 at Kitengela. So it was further ordered:

“The said motor vehicle KAN 612 J is hereby to be released to CID Embakasi Kajiado for purposes of prosecuting a robbery case, but while the vehicle is released, it is forfeited property.”

Again it is noted in passing that the accused persons lodged KSU HCCR. APPEALS NO. 122, 123, 125, 127, 128 all of 2007. There was a duplication here but no matter. The appeals were heard, the conviction varied as well as the sentences. The appellants indicated that they would go to the Court of Appeal.

What concerns here is that one Grace Muchanji of P. O Box 54 KITENGELA, wrote to this court intimating that the motor vehicle above described as bearing reg. no. KAN 61 J was carrying fake number plates when it was arrested trafficking drugs. She filed a copy of the log book as well as a certificate of registration to the effect that that motor vehicle's genuine reg. no was KAN 157 M in the name of Wilfred Muchanji – the husband. It was stolen from him during the robbery at Kitengela on the night of 9th June 2007 wherein Wilfred was killed. Then the motor vehicle was found trafficking drugs in August 2007 bearing the said fake registration numbers. When it was released and towed to Kajiado, there she was able to identify it with number KAN 157 M still on the window panes plus other marks. The author sought any assistance. That transpired to mean that the orders of forfeiture be varied so that the subject motor vehicle be free to go to her eventually after the KAJIADO CR. C. No. 978/07 is determined. This was gleaned from an earlier letter by the State Law Office (KSU) dated 30/3/2009 on behalf of the author, Grace. On receipt of that letter the court advised that the claimant (Grace) do approach the court herself – hence the letter of 19.2.2009 being referred to. It must be 19.4.2009 – not Feb. 2009.

Anyway, Ms. Oundo Senior State Counsel KSU was invited to address the court on the revision sought by Grace. Counsel opined that S. 20 of the Act was not the proper one under which final forfeiture orders could issue. S. 41 was, whereby the order of forfeiture had to be placed before the High Court to formally make the order. But in the circumstances forfeiture ought to be lifted and the motor vehicle released to Grace, after the robbery case at Kajiado.

This being a matter of revision only, the court had had sight of S. 20 of the Act under which the learned trial magistrate ordered forfeiture and S. 41 propounded on by the learned State Counsel, without more. It is appreciated that a lower court trying a case under the Act can order under S. 20 forfeiture of the items therein stated including the means of conveyance used in the alleged offence (a proviso thereto).

However, the trial magistrate should make a report of such a forfeiture to the High Court to set in motion the processes set out in that section, to formalize that order of forfeiture. This includes publication of the convicted person, the offence etc. in the Gazette and newspaper stating the property to be forfeited. This was not done in the case of the motor herein and so the forfeiture order referred to above, as of now is invalid. It can only be so if S. 41 is complied with. It has so far not been.

Accordingly, the motor vehicle KAN 157 M, used in the drugs case while bearing fake numbers KAN 612 J, although properly released to the police in investigations and probably prosecution in KAJ CR. C. 998/07, at the end of it that motor vehicle will be released to the party satisfactorily verified as the beneficial owner, and that could be Grace, the author herein or whoever, the legal owner, William, being said to have died.

Orders accordingly.

Delivered on 25.5.2009.

J. W. MWERA

JUDGE

JWM/hao