



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CIVIL APPEAL 193 OF 2008**

**KENYA REVENUE AUTHORITY.....APPELLANT**

**VERSUS**

**PETER OBARA ONDARI.....RESPONDENT**

**(Appeal against the judgment in the Senior Resident Magistrate's Court at**

**Rongo, Civil Suit No.101 of 2007 by Honourable David Kemei Esq., RM)**

**RULING**

The Applicant Kenya Revenue Authority seized motor vehicle registration number KAG 620Y belonging to the Respondent **Peter Obara Ondari** on basis that it was uncustomed goods, it had fraudulent registration documents and that there were other vehicles with the same registration number. The Respondent filed a suit at Resident Magistrate's Court at Rongo for the release of the vehicle. The Applicant filed a Defence. The suit was heard and determined in favour of the Respondent. An order was issued for the Applicant to release the vehicle and for general damages for unlawful seizure. An application for stay of execution was filed by the Applicant but was dismissed by the trial court. An appeal was filed against the judgment, and present application for stay pending the resolution of the appeal was also filed.

The judgment in the lower court was delivered on 9/10/08 and ruling of the stay application was delivered on 23/4/09. On the same day the present application was filed. There was no delay in bringing this application.

The Applicant is a government agency and under **Order XL1 rule 6** of the **Civil Procedure Rules** no security for the due performance of the decree herein is required.

The question that the court has to decide is whether substantial loss may result to the Applicant unless stay is granted. I listened to arguments from **Mr. Twahir** for the Applicant and **Mr. Gichana** for the Respondent. The decree was for the release to the vehicle and general damages. The damages were not specified. In regard to the general damages, the applicant's case is that if the application is not granted and the appeal ultimately succeeds it will not be able to recover the damages as the Respondent is a man of straw. The Respondent, in response, stated he is a businessman based at Awendo township and that this is where the Applicant has always traced him. That the Respondent has a vehicle would show that he has means. On the material available the Applicant has not demonstrated that the Respondent has no means and therefore that any general damages payable may not be recovered.

The vehicle in question was seized by the Applicant from the Respondent. No other person appears to be making claim to it. He has registration documents to it which were issued by the Applicant, but which the Applicant later said were fraudulently obtained. Under **section 8 of the Traffic Act, Cap.3 of the Laws of Kenya** the Respondent is the *prima facie* owner of the vehicle. But under **sections 210 and 213(1)** of the **East African Community Customs Management Act, 2004** the applicant was entitled to seize the vehicle if it reasonably believed duty on it had not been paid. It would also not be in public interest to have on our roads more than one vehicle with the same registration number. These are the special circumstances that lead this court to exercise its discretion in granting the application for stay of execution pending the hearing and determination of the appeal. I ask, however, that costs of the application be paid by the Applicant who has been indulged.

**DATED** at KISII this **26<sup>th</sup>** day of **June, 2009**

**A. O. MUCHELULE**

**JUDGE**

**26/6/2009**

Before A. O. Muchelule Judge.

Mongare cc.

Mr. Kerosi

Mr. Twahir for KRA

**Court:** Ruling in Open Court.

**A. O. MUCHELULE**

**JUDGE**