



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Civil Appli 362 of 2009**

**IN THE MATTER OF AN APPLICATION BY LYDIA WANZA KAINDI FOR LEAVE TO  
APPLY FOR ORDERS OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF THE CRIMINAL PROCEDURE CODE CAP. 75 LAWS OF KENYA**

**AND**

**CRIMINAL CHARGES AGAINST LYDIA WANZA KAINDI**

**AND**

**THE TRAFFIC ACT CAP. 403 LAWS OF KENYA**

**AND**

**MOTOR VEHICLE REGISTRATION KAQ 111G TOYOTA LAND CRUISER**

**LYDIA WANZA KAINDI..... APPLICANT**

**V E R S U S**

**THE COMMISSIONER OF POLICE.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY-GENERAL..... 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

Before me is a Chamber Summons dated 12<sup>th</sup> June, 2009 filed by M/S Maobe Maotsesung & Company advocates on behalf of the applicant named as **LYDIA WANZA KAINDI**. The respondents are named as **THE COMMISSIONER OF POLICE (1<sup>st</sup> respondent)** and **THE ATTORNEY-GENERAL (2<sup>nd</sup> respondent)**. The application was filed under Order LIII rule 1 of the Civil Procedure Rules, the Law Reform Act (**Cap. 26**), the Judicature Act, and section 3A of the Civil Procedure Act.

The orders sought are that-

1. ***This application be certified as urgent and be heard ex-parte.***
2. ***The applicant be granted leave to apply for orders of judicial review by way of certiorari to remove into this Honourable Court, and to quash, the decision by the Kenya Police stationed at Kilimani Police Station to charge her with criminal offences.***
3. ***The applicant be granted leave to apply for orders of judicial review by way of mandamus to compel the Kenya Police at Kilimani Police Station to release from their custody the Applicant's motor vehicle registration number KAQ 111G with immediate effect.***
4. ***The grant of leave to the applicant to apply for the aforesaid orders do operate as a stay of the decision of the Kenya Police to purport to charge her with any criminal offence relating to the matter herein and to hold motor vehicle registration number KAQ 111G and the same be released to the Applicant forthwith.***
5. ***Any other relief as this Honourable Court may deem fit to grant.***
6. ***Costs of and incidental to this application.***

The application was filed with a supporting affidavit sworn by the applicant on 12<sup>th</sup> June, 2009. There was also a **STATUTORY STATEMENT** dated 12<sup>th</sup> June, 2009 which was filed. In addition, there was filed an **AFFIDAVIT VERIFYING STATUTORY STATEMENT** sworn by the applicant on 12<sup>th</sup> June, 2009.

Counsel for the applicant, Ms Matano also addressed me in support of the application.

From the documents filed, there is clearly an intention by the police to charge the applicant her in a criminal case at Kibera Law Courts, for forgery. The complaint of the applicant is with regard to the purported exercise of power, by the Commissioner of Police and the Attorney-General, in detaining her motor vehicle and deciding to charge her with a criminal offence. The applicant claims to have acquired the motor vehicle legally, through a legal purchase.

Having considered the facts before me, I am of the view that the applicant has demonstrated an arguable case. I will grant leave to file judicial review proceedings as I consider that there is something with regard to the exercise of power by public officials that needs to be investigated by this court.

The applicant has asked for a stay of the decision to charge her, as well as release of the motor vehicle forthwith. Though stay orders regarding the prosecution might be justified, the release of the vehicle at this stage, in my view, might be inappropriate. I am not certain whether the said motor vehicle has been held as an exhibit. I will be reluctant to release the vehicle at this ex-parte stage.

Consequently, I order as follows-

1. ***I certify the application as urgent.***
2. ***Leave is granted to the applicant to file judicial review proceedings for certiorari and mandamus as requested. The Notice of motion will be filed within 14 days from today.***
3. ***I grant stay of the decision of the Kenya Police to charge the applicant with any criminal offence relating to the matter up to 24<sup>th</sup> July, 2009 unless extended or varied by this court.***
4. ***Costs will follow the decision in the Notice of Motion to be filed.***
5. ***Mention on 24/7/2009.***

Dated and delivered at Nairobi this 25<sup>th</sup> day of June, 2009.

**George Dulu**

**Judge.**