



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Miscellaneous Application 213 of 2009**

**JAPHET OGAMBA GICHANA.....PETITIONER
-VERSUS-
THE OCS KEROKA POLICE DIVISION.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT**

RULING

This petition was served on the Honourable the Attorney General but received no response. The factual basis of the application has therefore not been controverted.

On 5/9/2009 motor vehicle registration number KAQ 215M matatu was impounded by traffic police officers from Keroka police station while it was being driven by Mark Motika who was in the employment of the petitioner. The petitioner is the owner of the vehicle having bought it from the previous owner.

The driver did not disobey any signal given by the officers and had not obstructed, or committed any traffic offence. The officers did not say why they were impounding the vehicle. They did not issue any notice of intended prosecution, and have not charged the driver or the owner since. The petitioner has visited the station to have the vehicle released but that has not met with success. He now states that his constitutional right to the vehicle has been infringed and seeks the protection of the court. On basis of the facts above, it is declared that the petitioner's right to the vehicle under *section 75 of the constitution* has been violated and an order is hereby issued to the OCS Keroka police station, or to any other officer concerned, to release the vehicle to him. The petitioner shall be at liberty to sue for damages in regard to this illegal detention of the vehicle.

Dated, signed and delivered at Kisii this 23rd day of November, 2009.

A.O.MUCHELULE

JUDGE

23/11/2009

Before A.O.Muchelule-J

Mongare court clerk

Mr. Bosire for applicant

Mr. Kemo –present

COURT: Ruling in open court

A.O.MUCHELULE

JUDGE

23/11/2009