



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Application 577 of 2007

IN THE MATTER OF APPLICATION FOR AN ORDER OF CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF THE TRAFFIC ACT CHAPTER 403, LAWS OF KENYA

BETWEEN

REPUBLIC..... APPLICANT

AND

THE REGISTRAR OF MOTOR VEHICLES..... 1ST RESPONDENT

THE HON. ATTORNEY GENERAL..... 2ND RESPONDENT

WINNIE KARIMI INTERESTED PARTY

EX – PARTE - ALBERT KANAKE KARIUKI

JUDGMENT

The ex parte Applicant, Albert Kanake Kariuki has challenged the decision of the Registrar of motor vehicles to transfer motor vehicle KAC 040 Y to Winnie Karimi, the Interested Party herein. The only issue for determination is whether the Registrar's decision to transfer the said vehicle to the Interested Party was illegal and unprocedural.

The Applicant filed the notice of motion dated 26/6/07 which is supported by grounds found filled in the statutory statement dated 14/8/08, a verifying affidavit dated 28/5/07, a further verifying affidavit dated 30/3/09 and the Applicant's skeleton arguments. The Respondent opposed the motion by filing a verifying affidavit sworn by S. Asiachi on 23/11/07 and a further affidavit sworn on 22/9/08. The Interested Party also swore a replying affidavit dated 7/7/07.

It is the Applicant's contention that he imported the disputed motor vehicle in 1993 which was registered in his name. At the time he was living with the Interested Party and she had access to all his vehicles. On 15/2/07 when he wanted to dispose of the vehicle he conducted a search with Registrar of motor vehicles and found that it had been transferred to the Interested Party without his consent. He denied ever signing the transfer forms in relation to the said motor vehicle. In a further affidavit, he attached a report from a

document examiner who found that the signature on the document does not belong to the Applicant. The report is prepared by *HAWK eye Technologies and Private Investigator (AK K3)*.

Mr. Asiachi deponed that the Respondent acted lawfully in that on 31/1/1997 the Respondent received an application for transfer of ownership on Form C, dated 24/1/1997, duly signed by the Applicant accompanied by the Applicant's identity card and that of the Interested Party and being satisfied that the application was in order, allowed the transfer and a fee of 1750/= was paid by the Interested Party. Later, the Log book was collected by the Interested Party (SA 1). It is denied that the Respondent exceeded its mandate in registering the vehicle. The Interested Party on the other hand depones that she was the Applicant's common law wife from 1988 till 1994 and they have one issue of the marriage. It is her case that the Applicant lawfully transferred the vehicle to her during the marriage and she even contributed Kshs.100,000/= towards its purchase. That she has been renewing the road licence since, as evidenced by the attached logbook.

By 2007 it was a requirement that for one to renew the road licence they needed the logbook to be endorsed by the Respondent upon payment for the licence. The Applicant's logbook is blank. It seems the last renewal of the road licence was in 1993. He has not told the court how he managed to use the said vehicle from 1993 till 2007 without renewing the road licence. The Interested party has shown that she is the one who has been using the vehicle and managing the road licence. It seems the Applicant has not told the court the whole truth.

The Applicant contends that he has a writing expert's (AKK 3) report to prove that the signature on the transfer form is not his. That means that this court should consider the merits of the application. Judicial Review proceeds by way of affidavit evidence. There is no way this court can verify or test of the document examiner's evidence. Besides, the Respondent cannot respond to such evidence in affidavit form. The said handwriting expert cannot be cross-examined on the said report. The parties did not agree that a private investigator examine the documents Government. May be a nominated Government examiner should have examined the documents and produced the report or the evidence should have been adduced at a hearing where viva voce evidence can be adduced but not by way of Judicial Review.

The Applicant discovered in February 2007 that the disputed motor vehicle had been transferred to the Interested party. He filed this application in August 2008. Although I would agree with the Applicant that the decision of the Respondent is not subject to the 6 month rule under Order 53 Rule 2 Civil Procedure Rule yet there is no explanation why the Applicant did not file the application once he made the discovery. Eighteen months is a long time for which the Applicant should have offered an explanation. There has been inordinate delay in filing this application. Judicial Review remedies are discretionary and the court may decline to grant them even if they are deserved. In this case, even if the Applicant deserved the orders of Judicial Review sitting on ones rights for 18 months would have disintitiled him and the orders.

What arises from the pleadings and submissions herein is that the Applicant and Interested Party have disagreed over the ownership of the said vehicle that relationship having fallen apart and the Applicant wants to use a shortcut to getting the motor vehicle back. Since the Interested Party claims that they were husband and wife, which the Applicant did not disclose, that is an issue to be determined in another forum but not by way of Judicial Review . The Applicant seem to have come to this court with dirty hands and that explains the delay. This court will not allow an abuse of its process and will dismiss this application with the Applicant bearing the costs.

Dated and delivered at Nairobi this 16th day of November

2009.

R.P.V. WENDOH

JUDGE

Presence:- _____

Mr. Sijeny Wanyanga for Applicant

N/A 1st Respondent

N/A 2nd Respondent

Muturi Court clerk Interested Party