



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Revision 6 of 2008

REPUBLICPROSECUTOR

VERSUS

1. GEOFFREY MWANGI KHARO

2. MOHAMED MAMBO MTUNEACCUSED

RULING ON REVISION

Pursuant to the provisions of Section 363(2) of the Criminal Procedure Code, Mr. Boaz Olao, the learned Chief Magistrate caused the proceedings in Mombasa C.M.C.Cr. Case No. 4033 of 2007 Republic =Vs= Mohamed Mambo Mtune to be placed before this court for perusal.

In exercise of the supervisory jurisdiction under Section 65(2) of the constitution and Section 362 of the Criminal Procedure Code, I perused the aforesaid proceedings. The record shows that Mohamed Mambo Mtune, hereinafter referred to as the Respondent is before the Chief Magistrate's Court facing the charge of stealing a Motor Vehicle contrary to Section 278(A) of the Penal Code. The particulars of the offence are that on the 28th day of July 2007 at Gate 12 within Kilindini Port, Kilindini District within Coast Province jointly with another before court stole a motor vehicle make Mercedes Benz Model 2540 (Actros) chassis No. 332 K – 311506 valued at Kshs.4,500,000/- the property of M/s Consol Base Freight Station Mombasa. The case is yet to be heard and determined by the subordinate court.

The Respondent and Chief Inspector Wambua, the trial court's Prosecutor, appeared before R. Kirui, learned Principal Magistrate. The record shows that the Republic hereinafter referred to as the applicant through the court prosecutor applied for the aforesaid motor vehicle to be released to the complainant because the complainant was incurring huge expenses. The prosecutor indicated to the learned Principal Magistrate that the prosecution had taken photographs of the same. The record further shows that the Respondent did not oppose the application.

The learned Principal Magistrate proceeded to grant the order. In his brief ruling he stated as follows:

“Though I am inclined not to deal with what has not been produced before court I note that there is no objection to the release of the said motor vehicle and therefore have no reason not to allow the application and so I do allow it.”

When the trial court's file was placed for mention before Mr. Boaz Olao, learned Chief Magistrate on 25.2.2008, the learned Chief Magistrate ordered for the file to be placed before this court to revise the

orders of the learned Principal Magistrate.

This court has been given enormous supervisory powers over subordinate courts. The powers under Section 362 of the Criminal Procedure Code is intended to be exercised to enable this court satisfy itself of the correctness, legality and propriety of the findings and or orders recorded in the subordinate court's proceedings. What is clear is that the subject matter of the charge facing the Respondent is motor vehicle Mercedes Benz model 2540 (Actros) Chassis No. 332 K – 311506. The same has not been produced as an exhibit before the trial court. It is still the property of the prosecution hence not within the control or possession of the court. The same only becomes the property of the court when it is produced as an exhibit in evidence. The fact that the Respondent did not resist the application for the release of the motor vehicle in itself did not confer jurisdiction to the learned Principal Magistrate to issue the order releasing the same. In short, the learned Principal Magistrate made an order without jurisdiction hence the orders can be interfered with by an order of revision.

For the above reasons I set aside the orders of R. Kirui issued on 9th January 2008 and direct that the said motor vehicle be restored back to the investigating officer who seized the same. It should be noted that without reception of evidence, the learned Principal Magistrate would not be in a position to ascertain the legal owner of the aforesaid motor vehicle hence his order did not confer any proprietary interest in the motor vehicle.

Dated and delivered at Mombasa this 4th day of March 2008.

J.K. SERGON

J U D G E