



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appli. 147 of 2008

DAVID GICHUHI KARIUKI..... APPLICANT

V E R S U S

THE COMMISSIONER OF POLICE..... RESPONDENT

R U L I N G

Before me is an application by way of Chamber Summons dated 31st March, 2008 filed by Odawa, Ombwayo and Ochich Advocates on behalf of the applicant DAVID GICHUHI KARIUKI. The respondent is named as the COMMISSIONER OF POLICE. The application was brought under Order LIII Rule 1 (1), (2), and (4) of the Civil Procedure Rules. It was brought under certificate of urgency. The substantive orders sought are that-

2. *The applicant be granted leave to apply for an*

order of prohibition directed against the respondent by himself or through his officers, to prohibit him from interfering with the applicant's and or his agent's and employees' possession of motor vehicle registration number KAT 270 N, and specifically to refrain from ordering the applicant from using and continuing to use tinted windows in his vehicle registration number KAT 270N and further from denying him the opportunity to install and use and continue to use the sports car tyre big wheels on his vehicle, and also to refrain from interfering with the radio sterio system and television installed in the vehicle for use by passengers and further from harassing the applicant, his vehicle's painting, which is black in colour with about 35% other colour decorations.

3. *The applicant be granted leave to apply for an*

order of prohibition directed against the respondent by himself or through his officers, to prohibit him from compelling the applicant to have a yellow line across the whole of the body of his vehicle whose specifications are changed at the whims of the respondent.

4. *The leave so granted does operate as a stay of*

the actions of the respondent and his officers pending the hearing and determination of the substantive notice of motion application hereto.

6. *Costs of this application be provided for.*

Though the application was filed ex parte, I ordered the same to be served. On 18/4/2008, after service Mr. Atanda appeared for the respondent and recorded a consent that the leave sought to file Judicial Review proceedings be granted as requested in prayer 2. He sought time to obtain instructions on the other prayers.

On 20/5/2008 Mr. Ombwayo was present for the applicant and Ms. Murithia appeared for the respondent. The Counsel said that they wanted to argue prayer (3) and (4).

Mr. Ombwayo submitted that the actions of the respondent had restrained his client from use of his motor vehicle KAT 270 N from 24/3/2008. Counsel relied on the affidavit filed in the application and stated that the alleged objections of the respondent were not based on the provisions of the Traffic Act. Counsel submitted that the Attorney-General had powers to direct the public officers to act within the law. Counsel emphasized that the legal rights of the applicant had been infringed. Counsel submitted that the legal provisions merely indicated the specification of motor vehicle windows.

With regard to colours, the law was that the colours should not prevent the visibility of the yellow line. With regard to big tyres, the applicant used sports car wheels and, if he had contravened the law, he should have been charged under the Traffic Act. Counsel also submitted that the applicant wanted to fix speakers and a TV for use by passengers, not big speakers that would interfere with the concentration of the driver. Counsel concluded that there was no evidence that the applicant had been charged in court.

Ms Murithia for the respondent opposed the application and relied on the provisions of the Traffic Act. Counsel argued that the orders sought were contrary to the provisions of the Traffic Act. Rule 30 (2) of the Traffic Rules prohibited the use of reflective materials, through which law enforcing officers could not see inside the vehicle. On yellow band, Counsel submitted that matatus were required to have a yellow line, and the law prohibited use of many colours on the motor vehicle. On use of big tyres, the law under Traffic Rule 20 prohibited the use of big tyres which were not proportionate to the body. Counsel also argued that loud music and a TV would distort concentration of the driver.

I have considered the application, documents filed, and arguments made before me by both counsel for the parties. Having considered the facts before me, I will not grant any stay orders. The issues revolve around the enforcement of the Traffic Act. That is the law and everybody, including the police, are required to comply with its provisions. This court cannot go down and pretend to be administering the Traffic Act. It will however, deal with specific breaches by the public or the police. I see no basis for making blanket orders on the administration of the Traffic Act. I will not grant stay orders.

However, I grant leave to the applicant to file Judicial Review proceedings as requested in prayer 2 and 3 of the application so that the issues can be canvassed and determined on merits. The main motion will be filed within 21 days from today, otherwise the leave herein granted will automatically lapse. Costs in the cause.

Dated and delivered at Nairobi this 5th day of June, 2008.

George Dulu

Judge.

In the presence of –

Mr. Ombwayo for applicant

Ms Murithia for respondent - absent

Mwangi Court Clerk.