



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

Misc. Appli. 274 of 2008

REPUBLIC

V E R S U S

THE COMMISSIONER OF POLICE.....1ST RESPONDENT
TRANSPORT LICENSING BOARD.....2ND RESPONDENT
MOTOR VEHICLE INSPECTION UNIT.....3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT

ERIC WAWERU WACHIRA- EXPARTE APPLICANT

AND

THE PERMANENT SECRETARY

MINISTRY OF TRANSPORT 1ST AFFECTED/INTERESTED PARTY
THE REGISTRAR OF MORTOR VEHICLE.....2ND AFFECTED/INTERESTED PARTY
THE BURU BURU DTO.....3RD AFFECTED/INTERESTED PARTY
THE KAYOLE DTO.....4TH AFFECTED/ INTERESTED PARTY
THE MAKONGENI DTO.....5TH AFFECTED/ INTERESTED PARTY
THE PANGANI DTO.....6TH AFFECTED/INTERESTED PARTY
THE CENTRAL DTO.....7TH AFFECTED/INTERESTED PARTY

R U L I N G

Before me is a Chamber Summons dated 11th June, 2008 filed by Kivindu & Company advocates on behalf of the ex-parte applicant named as **ERIC WAWERU WACHIRA**. The application was filed on 12th June, 2008, and was filed pursuant to Order 53 rules 1, 2 and 4 of the Civil Procedure Rules, the Law Reform Act (**Cap. 26**), as well as Section 3A of the Civil Procedure Act.

The application was filed under certificate of urgency. It seeks for leave to file Judicial Review Proceedings for order of certiorari and prohibition with regard to alleged impounding and removal of number plates for motor vehicles by the Nairobi Area Traffic Police. The application also requests for stay orders, if the leave is granted. The application has grounds on the face of the Chamber Summons. It was also filed with a **STATEMENT OF FACTS, and a VERIFYING AFFIDAVIT**. In the **STATEMENT OF FACTS and VERIFYING AFFIDAVIT**, it is averred that the action of the police to impound and detain the applicant's number plates or motor vehicles KBA 832 E, KAZ 107Q; KAU 908R, and KBA 885G by Buru Buru Police Station Officers on the ground of the colours of the subject motor vehicles contravened the law.

I ordered the application to be served. The Attorney-General filed grounds of opposition to the application. The main thrust of the grounds of opposition is that the application was fatally defective as it was not brought in the name of the **REPUBLIC**. Secondly, that the application had been overtaken by events. Thirdly, that the application sought to prevent the respondents from performing their statutory duties; and that the application is an abuse of the court process.

At the hearing of the application, Mr. Ngala for the applicant, submitted that the respondents impounded and detained the applicant's motor vehicles on the ground that same had multiple colours and were operating on unauthorized routes. They later released the motor vehicles, but did not release the number plates. The Counsel also submitted that the second respondent detained the logbooks for the motor-vehicles. Therefore, the orders sought were justified.

Mr. Menge for the respondents relied on the grounds of opposition. Counsel submitted that the application was incurably defective. Secondly, the motor vehicles had already been released. Therefore, the application was overtaken by events. Counsel also emphasized that the applicant had come to court to prevent the police from performing their statutory functions, in view of the fact that the police had powers to impound motor-vehicles under the Traffic Act. Counsel also argued that the applicant had named several police stations, and State Counsel was not able to get instruction because of that error. Counsel further argued that the applicant had not shown evidence which would justify the orders sought. Therefore, Counsel requested that the application be dismissed with costs.

In response Mr. Ngala submitted that though a number of interested parties were named in the application, the said interested parties were not connected to the orders sought. Counsel also submitted that the request for leave to apply for prohibition, was with regard to the future. Counsel submitted that the orders sought were not overtaken by events, as the applicant was now seeking release of number plates.

I have considered the application and submissions of both Counsel who appeared before me.

The first issue is whether the application is fatally defective as it was not brought in the name of the **REPUBLIC**. I find that the application is not fatally defective. The application that should be brought in the name of the **REPUBLIC** is the Notice of Motion after leave is granted, not the present Chamber Summons for leave. I dismiss that objection by Counsel for the respondent.

Having considered all the facts before me, I am of the view that the applicant has demonstrated a prima facie arguable case. There is something to be investigated by this court. The arguments put across by Counsel for the respondents appear to go to the merits of the application or Notice of Motion to be filed. At this stage, I am not required to delve into the merits of the substantive application. I will grant leave to file Judicial Review Proceedings.

As for stay orders, these can only be issued against the named respondents. Though Counsel for the respondents states that the police have a right to detain motor vehicles, under the Traffic Act, he has not cited any relevant section. He does not appear to deny that the number plates were not released to the applicant, when the motor vehicles were released. Therefore, in my view, the detention of the said number plates will cause undue hardship on the applicant. Of course the police can charge the applicant or anybody else for committing offences under the Traffic Act. However, that is another matter. There is

no indication that the detention of the number plates relates to any charges.

Consequently, and for the above reasons, I order as follows-

- 1. I grant the applicant leave to file Judicial Review Proceedings for certiorari and prohibition as requested in prayers 2 and 3 of the Chamber Summons application. The main motion will be filed within 21 days from today and in default the leave hereby granted will automatically lapse.**
- 2. In the meantime, I grant orders of stay against the impounding or continued detention of the applicants number plates mentioned in the application, which means that the same will be released to the applicant by the respondents pending the hearing and determination of the main motion, provided the main motion is filed and served within 21 days from today and in default the stay orders hereby granted will automatically lapse.**
- 3. Costs in the cause.**

It is so ordered.

Dated and delivered at Nairobi this 25th day of July, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Ngala for the applicant.