



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Misc Civ Appli 185 of 2005**

**REPUBLIC.....APPLICANT**

**V E R S U S**

**THE COMMISSIONER OF POLICE OF KENYA.....)1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF CRIMINAL INVESTIGATION DEPARTMENT.....)2<sup>ND</sup>  
RESPONDENT**

**JOHN BUNDI N'GALA.....)EX PARTE APPLICANT**

**J U D G M E N T**

1. The ex-parte Applicant herein is one John Bundi N'gala and by his Notice of Motion dated 18/11/2005 under LIII Rules 1,2 and 3 of the Civil Procedure Rules and Ss.8 and 9 of the Law Reform Act he seeks the following orders:

(a) That the Honourable Court be pleased to issue an order of Certiorari to call and quash the order/decision of the 2<sup>nd</sup> Respondent of 31/8/2005 of seizing/impounding the ex-parte applicant's motor vehicle Reg. KAM 315 E ISUZU FSR 3311 as the same grossly violated the ex-parte applicant's constitutional rights to ownership of property.

(b) That the Honourable court be pleased to issue an order of Mandamus compelling the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to release the ex parte applicant's Motor Vehicle Reg. KAM 315 ISUZU FSR 3311 immediately and unconditionally.

(c) That the honourable court be pleased to issue an order of prohibition prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> respondents and/or officers acting under their directions from ever seizing the exparte applicant's Motor Vehicle Reg. KAM 315 E ISUZU FSR 3311.

(d) That the Honourable court be pleased to make orders declaring the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondent and or officer under their command, or impounding the ex parte applicant's Motor Vehicle, illegal, arbitrary and unconstitutional.

(e) That the exparte applicant be awarded costs of this application

2. In the Statutory Statement of facts and Affidavit in support it is his claim that he is the sole registered owner of Motor Vehicle Registration Number KAM 315 E Isuzu FSR 3311 which he bought at a public

auction conducted by M/S Regal Hire Purchase Ltd and he paid the sum of Ksh.1.64 million as the purchase price. That upon transfer of the Motor Vehicle in his name, he took possession and operated it for two years until 30.7.2004 when Criminal Investigation Department Officers impounded the said Motor Vehicle in Kianjai area and drove it to Nairobi. On 22.8.2005, it was released to the Applicant without conditions being imposed or explanation offered for its initial detention.

3. It is the Applicant's further contention that on 31.8.2005 one Inspector Bakari returned to the Applicant's home on the alleged instructions of the 2<sup>nd</sup> Respondent and again took possession of the motor vehicle and drove it off to Nairobi. No explanation has since been offered and no criminal charges have been preferred against the Applicant and it is his case that his constitutional right to property has been breached hence the orders now sought in the motion before me.

4. I note from the Affidavit of service that all the Respondents were served but none chose to file any response to the Application and even when a hearing Notice was served on them for hearing on 8.3.2006 they chose not to attend or send counsel to represent them.

5. It is clear from the annexures to the Affidavit sworn on 10.11.2005 by the Applicant that:-

(i) He bought the motor vehicle KAM 315 E from Regal Hire Purchase Ltd for a sum of Ksh.1,640,000/- on "**as it is where is basis**" and the letter dated 13.9.2002 is clear in that regard (annexture "**JBNII**")

(ii) He made payment on 23.9.2002 and a receipt for the said sum was issued to him (annexture "**JBN III**").

(iii) On 27.9.2002 a transfer form was duly executed and the log-book now shows that he is the registered owner of the Motor Vehicle.

6. I do not know why the motor vehicle was impounded. I have seen annexture "**JBN B**", a police abstract and it is indicated that it was detained "**Pending resolution of Dispute of ownership.**" If that be the reason, then it is a lawful reason as to my knowledge the Criminal Investigation department is not the body to resolve disputes as to ownership of Motor Vehicles! No crime has been alleged which is its role to investigate. It is civil courts that ought to resolve disputes such as this one. It has not been said that the said department qualifies to be a civil court!

7. Where a public agency exceeds its mandate in law and works outside its legal jurisdictions, then this court can call forth the decision leading to such action and quash it. If the decision to impound and or detain the Motor Vehicle is contained in the Police Abstract, I have said that it is an illegal decision and prayer (a) of the Applications is merited.

8. There is no reason advanced that can be called lawful for the continued detention of the Motor Vehicle and prayer (b) is equally merited. Prayer (c) is to my mind purely speculative and I do not see why the orders of prohibition as framed should be issued. If the decision has been quashed and the motor vehicle ordered to be released that should put the matter to an end.

9. Prayer (d) is a declaration whose effect I do not see is sustainable in the context of this matter. In the entire Judgment, brief as it is I have made certain findings regarding what each party's role is and I see no firm basis even if it was possible to do so, to issue declarations in a judicial review matter as if a substantive prayer under Order LIII of the Civil Procedure Rules.

10. These being the findings herein I shall issue orders in terms of prayers (a) (b) and (c) of the Application dated 18.1.2005.

11. Costs thereof to the exparte Applicant.

12. Orders accordingly.

Dated, signed and delivered in open court at Meru this 3rd day of May 2006

**ISAAC LENAOLA**

JUDGE