



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Misc Appli 136 of 2006

PAUL SANDE

EMOLOT.....APPLICANT

VS

THE ATTORNEY GENERAL.....1ST
RESPONDENT

THE COMM. OF POLICE.....2ND
RESPONDENT

THE PROV. CR. INVESTMENT OFFICER WESTERN PROVINCE.....3RD
RESPONDENT

THE DISTRICT CR. INVEST. OFFICER AMAGORO DISTRICT.....4TH
RESPONDENT

SAMOU EDIN OSMAN.....5TH
RESPONDENT

RULING

By an ex-parte Chamber Summons, pursuant to the provisions of Order WII Rules 1 and 2 of the Civil Procedure Rules, the applicant seeks orders:

- (1) *That the application be certified as urgent.*
- (2) *That leave be granted to the applicant to apply for Judicial Review Orders of :*
 - (1) *Certiorari to remove into this court and quash the decision of the second, third and fourth defendant to impound and detain the applicant's motor vehicle Toyota Land Cruiser at Amagoro on 26th June 2006 without any lawful reason.*
 - (2) *Prohibition prohibiting the second, third and fourth respondent from raiding, threatening the applicant's workers and guests at Emael Tourist Lodge illegally.*
 - (3) *Prohibition prohibiting the second, third and fourth respondents and their agents from summoning, interrogating the applicant on matters that are purely of civil nature.*
 - (4) *Prohibition prohibiting the second, third and fourth respondent by themselves, agents*

and/servants from doing any act or thing that may injure the applicant or deprive him of his moveable property neither by way of seizure, impounding or otherwise.

3. That the leave granted do operate as a stay of the decision of the second, third and fourth respondents to impound and detain the applicant's motor vehicle now lying at Amagoro CID offices and the same be released forthwith to the applicant, pending the filing, hearing and final determination of the Judicial Review application to be filed.
4. That costs of this motion be provided for.

The application is based on the grounds:

- 1 That the applicant is the registered owner of Toyota Land Cruiser in issue and the same is not subject of the dispute between the applicant and fifth respondent and neither is it an exhibit in any proceedings.
- 2 That the applicant is likely to suffer substantial loss as he relies on the subject motor vehicle for his extensive travel within East Africa and Sudan in operation of this business.
- 3 That the dispute between the applicant and the fifth respondent is purely of civil and commercial nature and the police have no jurisdiction to summon, interrogate and impound the applicant's property in enforcing or seeking compliance on the part of the applicant.
- 4 That the Kenya Police are breaching the applicant's right to own and operate business in Kenya through their illegal raid and threats to close the applicant's business at Malaba Kenya.

The application is predicated upon the statement dated 30th June, 2006 and the annexed affidavit of Paul Sande Emolot sworn on 30th June, 2006.

For the applicant, it was argued that he is the registered owner of Toyota Land Cruiser in issue and that the same is not the subject of a dispute between the applicant and the 5th Respondent. The same is equally not an exhibit in any proceedings.

That the applicant is likely to suffer substantial loss if the said vehicle is not released as he relies on the same for extensive travel within East Africa and Sudan in operation of his business.

That the dispute between the applicant and *Samou Edin Osman* is purely of a Civil nature and the police lacks requisite jurisdiction to summon, interrogate and impound the applicant's property in enforcing or seeking compliance on the part of the applicant.

The applicant's last and final contention is that the Kenya Police in detaining the said vehicle is breaching the applicant's right to own and operate business in Kenya.

I have carefully analysed the application and take the position that it is urgent. Accordingly, I grant the application in terms of prayer 1 and 2 only. For avoidance of doubt, the said leave SHALL not operate as a stay of proceedings.

DATED and DELIVERED at BUNGOMA this 24th day of July 2006.

N.R.O. OMBIJA

JUDGE

Mr. Masinde) For the Applicant.