



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**MISC. CIVIL APPLICATION NO. 471 OF 2005**

**IN THE MATTER OF: ORDER LIII RULE 1(1), (2), (3),  
(4) & 2 OF THE CPC. SECTION  
8 OF THE LAW REFORM ACT,  
CAP 8 LAWS OF KENYA AND  
SECTION 3A OF THE CPA**

**IN THE MATTER OF: APPLICATION UNDER SECTION  
75 (2) (a) OF THE CONSTITUTION  
OF KENYA SECTION 24 OF THE  
SALE OF GOODS ACT CHAPTER  
31 OF THE LAWS OF KENYA**

**A N D**

**IN THE MATTER OF: MOTOR VEHICLE REGISTRATION  
NUMBER KAT 930D NISSAN  
HOMMY**

**A N D**

**IN THE MATTER OF: AN APPLICATION BY SAVION  
MTEPE NDUNE SEEKING LEAVE  
TO APPLY FOR AN ORDER OF  
PROHIBITION AND MANDAMUS  
DIRECTED AGAINST THE  
DISTRICT CRIMINAL INVESTIGATION  
OFFICER (URBAN  
POLICE STATION MOMBASA)**

**THROUGH COMMISSIONER OF**

**POLICE**

**THE REPUBLIC**

**Versus**

**THE ATTORNEY GENERAL (in a representative capacity For and on behalf of  
the Commissioner of Police, the Provincial Criminal Investigation Officer, The  
Provincial**

**Police Officer and the District Criminal Investigation Officer) .....  
RESPONDENT**

**EX-PARTE**

SAVION MTEPE NDUNE.....APPLICANT

A N D

1. ROSE N. OKEMWA

2. GEORGE SIKUKU MASIKA

3. JAMES SERENGO

4. GLOBAL LINK MOTORS CO. LTD. .... AFFECTED PARTY

**R U L I N G**

The Ex-Parte Applicant's application in this matter is not clear. In his chamber summons dated 20th June 2005 he seeks three main orders in the following terms:-

**“(a) THAT, the Applicant herein be granted leave to apply for ORDERS OF MANDAMUS and PROHIBITION by way of JUDICIAL REVIEW to move into this Honourable court for purposes of quashing, reviewing and evaluate the decision of the D.C.I.O. URNAB POLICE through the Commissioner of Police, in impounding and/or detaining motor vehicle Registration No. KAT 930D at URBAN POLICE STATION MOMBASA**

**(b) THAT, in event of leave being granted, a direction be made that such leave do operate as a stay of any further dealings in the said Motor Vehicle KAT 930D and the said Motor Vehicle be retained at such place as the court may direct pending hearing and determination of the application for JUDICIAL REVIEW and/or until further orders from this Honourable Court.**

**(c) THAT, the Respondent be prohibited from releasing or in any other way dealing with Motor Vehicle Registration No. KAT 930D NISSAN HOMMY to the detriment of the Applicant the said Motor Vehicle Registration No. KAT 930D to the 1st Affected party until further orders of this Honourable Court.”**

There are other orders sought like leave to serve the 2nd, 3rd and 4th affected persons through advertisement in newspapers and that if the said motor vehicle is released the same to be returned and kept at Urban Police Station.

Four grounds are stated in the application itself as the basis upon which the application is brought. In the accompanying statement six grounds are stated. A perusal of all those grounds, however, shows that the application is based on the ground that the police have impounded the Ex-parte Applicant's motor vehicle registration number KAT 930D on allegations of theft.

The order of mandamus sought in paragraph (a) issues to compel the performance of a public duty which is imposed on a person or body of persons by a statute which that person or body of persons has failed to perform to the detriment of a party who has a legal right to expect the duty to be performed. It does not issue to quash, review or evaluate any decision as prayed in this application.

Prohibition issues to prohibit the performance of a proposed act in excess of jurisdiction or in contravention of the law of the land. It cannot issue to quash or to rectify a wrongful act as prayed herein.

In the circumstances this application is fatally defective and the same is hereby struck out.

DATED and delivered this 22nd day of June 2005.

**D.K. MARAGA**

**JUDGE**