

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
HIGH COURT MISC. APPLICATION NO. 59 OF 2003
(APPEAL FROM JUDGMENT OF N. M. KIRIBA, SENIOR
RESIDENT MAGISTRATE KERUGOYA IN CRIMINAL

CASE NO. 656 OF 2003)

REPUBLIC APPLICANT

VERSUS

PATRICK MUTHII GIKAMA RESPONDENT

R U L I N G

Patrick Muthui Gikama has come to this court under section 121 of the Criminal Procedure Code seeking orders for release of motor vehicle KAJ 348 H and 6 drums of spirit detained at Kerugoya police station.

The genesis of the application was Kerugoya criminal case No. 666/03 in which the Applicant was on 26th March 2003 charged with contravening section 46 (1) of the liquor licensing Act by manufacturing liquor without a licence. When the charge was read to the Applicant he not only denied the charge but also produced relevant licences showing he had not contravened the said Act whereupon the trial magistrate being satisfied that no offence had been committed acquitted the Applicant under section 210 of the Criminal Procedure Code and ordered the police to release all the materials that they were holding.

Not being satisfied with the way the trial magistrate had handled the matter, the state moved to the court on 31st March 2003 by way of a miscellaneous application. The same was heard ex-parte by Ombijah J. who set aside the orders made by the Senior Resident Magistrate on 26th March 2003 pending the inter-parte hearing of the miscellaneous application. The Attorney General has however taken no action to have the miscellaneous application heard inter-partes nor has he filed any appeal against the orders made by the Senior Resident Magistrate. The Applicant being aggrieved by the continued detention of his goods has now moved to this court seeking an order for release of the goods.

Mr. Oluoch Senior State Counsel has urged the court to dismiss the application to enable him amend the miscellaneous application to bring it as an appeal.

I have considered this application and do find that the State Counsel not having taken any action to have the miscellaneous application heard and determined or to file an appropriate appeal it is neither fair nor just for the police to continue to hold the Appellant's goods which are obviously depreciating due to the time the matters are taking.

The Respondent has had ample opportunity to take remedial action in respect of the orders made by the S.R.M, they have failed to do so and there is no justification for the ex-parte order made on 31.3.2003 continuing in force. Accordingly I set aside the orders made by Ombija J. on 31.3.2003, and order that the Applicant's goods being held by the police be forthwith and unconditionally released to him.

Orders accordingly.

Dated signed and delivered at Nyeri this 5th day of December 2003.

H. M. OKWENGU

JUDGE