



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC.CIVIL APPLICATION NO.321 OF 2000

IN THE MATTER OF: AN APPLICATION BY JANE

**MUTHONI KARIUKI (MRS) AND
CYRUS MWANGI KAMAU FOR
LEAVE TO APPLY FOR AN ORDER
OF MANDAMUS**

AND

IN THE MATTER OF: THE POLICE ACT

REPUBLIC

versus

COMMISSIONER OF POLICE

EX-PARTE

JANE MUTHONI KARIUKI AND

CYRUS MWANGI KAMAU

JUDGMENT

Applicants have applied for Judicial Review under Order 53 Civil Procedure Rules. Leave to apply has already been granted by this Court.

Counsels submissions on the Notice of Motion shows that certain motor vehicles described in the Notice of Motion were seized by police and have been so held since 20/1/1999.

The Applicants have not been charged with any criminal offence in relation to the vehicles. The supporting affidavit shows that the motor vehicles are registered and belong to Applicants.

On the day of hearing State Counsel Mr. Ogoti appeared and opposed application and submitted that the Applicants were aware that the vehicles were seized on suspicion that they are stolen vehicles and that vehicles are under investigations and that Applicants have not appeared to the police station to explain the situation.

After hearing the arguments on both sides and upon reading the affidavits filed I have formed the view that the Police Department is guilty of delay in finalizing the investigations in the case of these vehicles.

Whereas the prosecution may prefer any charge as they are advised by the Attorney General against the Applicants the Constitution demands that such prosecutions must be conducted within a reasonable time. Also the Constitution provides that no person shall be deprived of his property without compensation. The Applicants have been deprived the use of their motor vehicles since 1999. The reasons given by the State are not sufficient to warrant continued detention of the vehicles at the police station. The police may prefer charges against Applicants at their leisure but in the meantime I see no reason to deny the orders sought. The affidavit of Stephen Barno shows that as far back as January 1999 the vehicles were examined and results obtained and reports made and again further affidavit of Justus Mithamo shows that he relaunched investigations in the same matter in the year 2000 but to date no charge has been made against any of the Applicants or both of them. The excuse given is that the Applicant Cyrus Kamau has failed to present himself to the police. I find this to be merely an excuse. The police have powers to arrest any person they suspect of having committed an offence. Why have they not arrested the Applicants to-date. The other point which is baffling is that no complainant is mentioned in these affidavits.

In the circumstances I allow the application and grant orders prayed for with costs to the Applicants.

Dated at Mombasa this 15th Day of April, 2002.

J. KHAMINWA
COMMISSIONER OF ASSIZE