



Mahinda v National Transport and Safety Authority; Director of Criminal Investigation (Interested Party) (Miscellaneous Petition E032 of 2024) [2025] KEHC 3273 (KLR) (Constitutional and Human Rights) (23 January 2025) (Judgment)

Neutral citation: [2025] KEHC 3273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
MISCELLANEOUS PETITION E032 OF 2024**

AB MWAMUYE, J

JANUARY 23, 2025

**N THE MATTER OF THE CONTRAVENTION AND THREATENED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
ARTICLES 10, 35, 40, 165, 258 OF THE CONSTITUTION OF KENYA 2010.**

BETWEEN

DAVIS MAINA MAHINDA APPLICANT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY RESPONDENT

AND

THE DIRECTOR OF CRIMINAL INVESTIGATION INTERESTED PARTY

JUDGMENT

1. The Miscellaneous Application Petition before this Honourable Court dated 12th July,2024 sought the following orders:
 - a. A declaration that the Petitioner is the legal, bonafide and registered owner of motor vehicle registration number KAR 866Z as of September 2005 and at all other material times;
 - b. A declaration that, the Motor Vehicle search dated 12th September 2005 which shows the Petitioner was not the owner, is fraudulent null and void with its consequences thereto ab-initio and be expunged from all records wherever it exists.
 - c. A declaration that, those culpable of forging and/or uttering the fraudulent search dated 12/9/2005 are liable for the consequences emanating from it.



- d. An order directing the interested party to investigate and prosecute those culpable, of forging and / or uttering the fraudulent motor vehicle search dated 12th September 2005 which shows the Petitioner was not the registered owner;
 - e. Costs of this suit.
2. The Applicant's case is clear from the pleadings and the supporting affidavit sworn on 12th July 2024. The petition is simply that the Petitioner is the legal and equitable owner of motor vehicle registration number KAR 866Z from its registration and has not sold and or transferred it.
 3. The Petitioner avers that for purposes of a tendering process he was required to confirm that he was the registered owner of motor vehicle registration number KAR 866Z as at 12th September 2005 but he only gave the current ownership status.
 4. The Petitioner further states that a purported copy of motor vehicle search dated 12th September 2005 was presented that the Petitioner was not the owner of the motor vehicle but rather belonged to one Titus Kilonzo Mutua. For that reason, he was considered not a transporter, and the tender award was therefore considered irregular.
 5. The Applicant/ Petitioner conducted a search of motor vehicle registration number KAR 866Z on 22nd September 2009 which confirmed he is the owner. In an attempt to resolve the matter, the Petitioner through his advocate wrote a letter dated 30th May 2023 to the Respondent requesting for the details of the registered owner for motor vehicle registration KAR 866Z as on 12th September 2005.
 6. The Respondent ignored and/or refused to disclose the requested information and only gave the current ownership details on the motor vehicle. Aggrieved by this, the Petitioner instituted this petition.
 7. Despite being served on numerous occasions the Respondents did not respond to the Petition and therefore the evidence by the Petitioner remained uncontroverted.
 8. The court directed the Applicant/ Petitioner to file written submissions and in compliance with the said directive, the Petitioner filed his submissions dated 28th October 2024 where he reiterated contents of the petition which the court has now carefully read and considered.
 9. It is however prudent to note that even if the Petitioner's evidence is not challenged, it does not mean that the court will not interrogate the said evidence and determine whether it is merited or not so that the court can come up with a logical conclusion as ex-parte evidence is not an automatic proof of the case.
 10. In the case of Gichinga Kibutha vs Caroline Nduku (2018) eKLR the court held; "It is not automatic that instances where the evidence is not controverted the Claimant shall have his way in court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.
 11. From the evidence adduced by the Petitioner, the Court finds the issues for determination are;
 - i. Whether the Petitioner is the lawful, bona fide, and registered owner of motor vehicle registration number KAR 866Z as of 12th September 2005.
 - ii. Whether the vehicle search record dated 12th September 2005 is fraudulent, null, and void.
 - iii. Whether NTSA's refusal to provide past ownership details constitutes a breach of statutory duty.



- iv. Whether the Interested Party should be directed to investigate and prosecute those responsible for creating and uttering the fraudulent record.
- v. Whether the Petitioner is entitled to the costs of this Petition.

Whether the Petitioner is the legal, bonafide, and registered owner of Motor Vehicle KAR 866Z.

12. The Petitioner presented sufficient evidence confirming his ownership of motor vehicle registration number KAR 866Z since 2004. This evidence included:
 - a. A certified copy of the vehicle logbook, which lists the Petitioner as the registered owner.
 - b. Multiple motor vehicle search results from 22nd September 2009, 17th August 2017, and 26th May 2023, all affirming that the Petitioner was the registered owner.
 - c. Correspondence with NTSA requesting confirmation of ownership details, which NTSA declined to provide.
13. The evidence before this Court clearly demonstrates that the Petitioner has been the legal, bona fide, and registered owner of motor vehicle KAR 866Z at all material times, including on 12th September 2005. No contrary evidence has been presented by the Respondent to dispute this fact.
14. Accordingly, this Court finds that the Petitioner has proven, on a balance of probabilities, that he was the legal owner of motor vehicle KAR 866Z on 12th September 2005.

Whether the Vehicle Search Dated 12th September 2005 is Fraudulent, Null, and Void.

15. The Petitioner also presented evidence demonstrating that the vehicle search document dated 12th September 2005 is fraudulent. The document contradicts verified records from NTSA showing the Petitioner's ownership since 2004; lacks NTSA's official stamp, raising doubts about its authenticity, and finally appears to have been introduced maliciously to discredit the Petitioner in his tendering pursuits.
16. The legal principles governing fraudulent documents are clear in *Kenya Anti-Corruption Commission v Ratilal Automobiles Ltd & 3 others* [2008] eKLR, the court held that forged and fraudulent documents are invalid ab initio (from the beginning) and should be expunged from public records. Similarly, in *Famy Care Limited v Public Procurement Administrative Review Board & Another* [2012] eKLR, the court emphasized that false records must be removed to prevent ongoing harm.
17. In this case, the search record poses a continuing risk to the Petitioner's commercial reputation and business interests. Allowing such a document to remain in NTSA's records would create an unjust prejudice against the Petitioner.
18. Accordingly, I hereby declare that the search record dated 12th September 2005 as fraudulent, and it is thus null and void; and direct NTSA to expunge the said document from all public records wherever it exists and to correct the same.

Whether the NTSA's failure to provide past ownership details constitutes a breach of statutory duty.

19. The National Transport and Safety Authority (NTSA) is a statutory body established under the [*National Transport and Safety Authority Act*, 2012](#) with a core mandate to regulate the transport sector and ensure road safety in Kenya. Among its primary duties is the registration of motor vehicles and the maintenance of vehicle ownership records. This obligation extends to ensuring that such records are accurate, accessible, and available to the public upon legitimate request. In this matter, the Petitioner



sought ownership details of motor vehicle registration number KAR 866Z as of 12th September 2005, to challenge a fraudulent vehicle search document. NTSA's refusal to provide this information raises critical questions regarding whether this omission constitutes a breach of statutory duty.

20. Under the *National Transport and Safety Authority Act*, 2012, NTSA is explicitly mandated to maintain an accurate database of vehicle ownership records and provide this information upon legitimate request. Section 4(2)(a) of the Act imposes a duty on NTSA to ensure that accurate records of motor vehicle ownership are kept and availed upon inquiry.
21. This duty aligns with the constitutional right to information under Article 35(1)(b) of *the Constitution* of Kenya, 2010, which provides that every citizen has the right to access information required to protect their legal rights.
22. In this case, the Petitioner requested ownership details of vehicle registration number KAR 866Z to defend himself against false allegations that he had misrepresented his ownership status in a tender process. Despite paying the required fees and following due process, NTSA refused to provide the requested information. This denial directly contravened its statutory obligations.
23. The court in *Nairobi Law Monthly Company Ltd v Kenya Electricity Generating Company Ltd & 2 others* [2013] eKLR emphasized that public authorities must disclose information upon request unless such information is legally exempt. In this case, NTSA had no legal justification for withholding past ownership details, especially when the information was critical to protecting the Petitioner's rights. The court in this landmark case underscored that public bodies cannot arbitrarily withhold information when its disclosure is necessary for safeguarding individual interests. NTSA's refusal to provide this information, without any justification, therefore violated the Petitioner's constitutional rights and constitutes a breach of statutory duty.
24. By failing to fulfill its statutory duty, NTSA not only violated the petitioner's constitutional rights but also acted contrary to the *Fair Administrative Action Act*, 2015, which requires public bodies to provide prompt and reasonable responses when making administrative decisions. Section 4(3) of this Act requires public authorities to provide written explanations for decisions that adversely affect individuals. NTSA's refusal to respond meaningfully — and without any valid reason — is a clear violation of this provision. The absence of a substantive reply from NTSA reinforces that it acted in breach of its legal duty to provide access to information that would have directly impacted the Petitioner's ability to protect his business interests and reputation.
25. In *Republic v Kenya Revenue Authority ex parte Aberdare Freight Services Limited* [2004] eKLR, the court ruled that public authorities must respond to legitimate requests for information where such information is essential for protecting a person's rights. The court held that unjustified refusal to provide such information amounts to an abuse of power. Applying this principle to the present case, NTSA's refusal to provide past ownership details — which were critical in disproving allegations against the Petitioner — constitutes not only an abuse of administrative power but also an unfair denial of justice.

Whether the Interested Party should investigate and prosecute those responsible

26. The Petitioner requested an order directing the Director of Criminal Investigations (DCI) to investigate and prosecute those responsible for creating and disseminating the fraudulent vehicle search document.
27. Kenyan law requires that any individual found to have fabricated or uttered false documents be held accountable under Sections 345 and 357 of the *Penal Code* (Cap 63). In *Republic v Director of*



Criminal Investigations ex parte George Mwangi Ndirangu [2015] eKLR, the court affirmed that public authorities must take active steps to investigate and prosecute individuals responsible for introducing false records into official databases.

28. Considering the fraudulent document's impact on the Petitioner's business interests and the violation of his constitutional rights under Article 35(2) (right to correction or deletion of misleading information), this Court finds it necessary to direct the DCI to investigate and prosecute the individuals responsible.

Whether the Petitioner is Entitled to Costs

29. The Petitioner successfully established his case, and the Respondent failed to provide any reasonable explanation for its refusal to provide the requested information. It is well established that costs follow the event. In Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another [2016] eKLR, the court held that costs should be awarded to the successful party as compensation for their expenses in pursuing the matter.
30. Given that the Petitioner has successfully demonstrated NTSA's breach of statutory duty and has shown the existence of a fraudulent document that NTSA failed to address, this Court finds that the Petitioner is entitled to costs.

Conclusion

31. For the reasons stated above, this Court issues the following orders:
- a. A declaration is hereby issued that the Petitioner is the legal, bona fide, and registered owner of motor vehicle registration number KAR 866Z as of 12th September 2005 and at all material times.
 - b. A declaration is hereby issued that the motor vehicle search record dated 12th September 2005, which falsely shows the Petitioner was not the registered owner, is null and void, and is to be expunged from all records wherever it exists.
 - c. The Respondent is ordered to expunge the said impugned search record dated 12th September 2005 from all public records wherever it exists and to correct the same.
 - d. An order is hereby issued directing the Director of Criminal Investigations (DCI) to investigate and prosecute those culpable of forging and/or uttering the fraudulent motor vehicle search dated 12th September 2005 that falsely claimed the Petitioner was not the registered owner.
 - e. The costs of this Petition are awarded to the Petitioner against the Respondent.

It is so ordered.

DATED, SIGNED, AND DELIVERED ON THIS 23rd DAY OF JANUARY 2025.

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BAHATI MWAMUYE.

JUDGE.

