



Chesos v Inspector General of Police & 2 others (Miscellaneous Criminal Application E015 of 2024) [2024] KEHC 7487 (KLR) (21 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7487 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E015 OF 2024**

JRA WANANDA, J

JUNE 21, 2024

BETWEEN

MATHEW CHESOS APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

RULING

1. The Applicant has approached this Court vide the Notice of Motion dated 21/01/2024 seeking the following orders:
 - i. Spent [.....]
 - ii. That this Honourable court be pleased to admit the Applicant on appropriate, just and reasonable bond/bail terms.
 - iii. That pending inter-parties hearing of this Application and/or further orders of this honourable Court; OCS Eldoret Police Station be and is hereby ordered to take of the Motor Vehicle Reg. No: KDM 850Q if need be and the same be released to the Applicant forthwith.
 - iv. That the Applicant be and is hereby directed to report and or make appearance at Eldoret Police Station when he is required and or summoned.
 - v. That any other orders deemed expedient in the circumstances.
2. The Application is filed through Messrs Bulbul-Koitui & Co. Advocates and is premised on the grounds set out thereon and the contents of the Supporting Affidavit sworn by the Applicant, Mathew Chesos.



3. In the Affidavit, the Applicant deponed that he is apprehensive that the officers of the 1st & 2nd Respondents are intending to unlawfully, illegally, arbitrarily and without any justifiable arrest him at any time, that on 22/11/2023 at around 8:00 pm, the officers of the 1st & 2nd Respondents dressed in civilian regalia and in a Subaru motor vehicle with no registration number chased his motor vehicle Reg. No: KDM 850Q while he was ferrying alcohol from his wholesale depot at Chepkoilel Junction along Iten Road. He deponed further that the officers attempted to stop his said motor vehicle while flashing lights and that sensing the that danger of being attacked, he sped off towards Iten Town and a pursuit ensued, the officers shot at his said motor vehicle and it stopped at a place near Iten Town. He added that he then alighted and escaped on foot and that he later learnt that the motor vehicle was towed to Eldoret Police Station where it is still detained to date. He claimed that he also learnt that the said unknown persons who had chased him and shot at the motor vehicle were officers of the 1st and the 2nd Respondent and he gave their names.
4. The Applicant also deponed that he learnt that the officers made a report at the Iten Police Station to the effect that they were chasing a stolen motor vehicle yet the Applicant is the lawful and legal owner of the motor vehicle having purchased it on 29/07/2023 from ENK Motors Mombasa through a loan facility which he is servicing to date, that the officers made an entry at the Eldoret Central Police Station to the effect that he was ferrying second generation spirits, namely, “Best” thus contradicting their earlier report at the Iten Police Station that they were chasing and/or pursuing a stolen motor vehicle. He deponed further that in both the reports made by the officers, they never stated that they opened fire and/or shot at the motor vehicle severally and further, that no “signal” was raised regarding gunshots contrary to police standing orders and/or procedures and/or processes.
5. The Applicant therefore contended that he is apprehensive that the officers intend to arrest him for the ulterior-motive of eliminating him without due process, that the officers are out to harass, intimidate and incarcerate him and that an arrest is imminent, that the motor vehicle has also been kept in the open where it is exposed to sunlight and rain thereby subjecting it to imminent wear and tear unnecessarily and that the same is also susceptible to its parts being removed thereby occasioning the Appellant enormous loss.
6. When the matter came up before me for directions, inter partes, the State had not yet filed a response and I granted it 10 days to file such Response. In the interim, I directed that the Applicant do post cash bail of Kshs 50,000/- and that the Applicant shall present himself to the Respondents for interrogation at any time that he is summoned and shall fully co-operate in the process of investigations.
7. However, by the time that I finalized this Ruling, the State had not filed any such Response.

Determination

8. The issue that arise for determination herein is

“ whether the police should be ordered to release the motor vehicle the subject herein to the Applicant and if so, on what terms”
9. According to the Applicant, the allegation upon which he found himself in this debacle is that the motor vehicle was stolen. The Applicant has however produced alleged evidence that he is the owner thereof, having purchased the motor vehicle through a hire-purchase transaction from a third party sometime in the year 2023.
10. Since neither the police nor any of the Respondents has filed any response to explain why the motor vehicle is being detained, and considering that the motor vehicle was detained way back in November



2023 and there being no evidence placed before this Court to the effect that any criminal prosecution has been preferred so far, I find no reason for the police to continue holding or detaining the motor vehicle.

11. In the premises, I allow the Notice of Motion dated 23/01/2024 and order as follows;
- i. Unless a criminal prosecution case has already been preferred against the Applicant in relation to or concerning an offence relating to or concerning the Motor Vehicle Reg. No: KDM 850Q in which case the Court seized of such criminal case shall be the one to deal with the issue, the Officer Commanding (OCS) Eldoret Police Station is hereby ordered to forthwith release the said Motor Vehicle Reg. No: KDM 850Q to the Applicant.
 - ii. The OCS shall be at liberty to take and keep or store photographs of the motor vehicle for future use should the need arise.
 - iii. That the Applicant is hereby directed to present himself to the police for interrogation at any time that he shall be required and/or summoned to do so and if necessary, the police are at liberty to charge the Applicant and present him in Court for any presumed offence relating to or concerning the said Motor Vehicle Reg. No: KDM 850Q save that in that process, the police shall consider granting the Applicant a police bond or cash bail pending his appearance in Court and shall not hold the Applicant in the police cells or in its custody before presenting him in Court.
 - iv. For avoidance of doubt, it is reiterated that that the above orders shall only apply in the event that no criminal prosecution case has already been preferred against the Applicant in relation to or concerning an offence relating to or concerning the Motor Vehicle Reg. No: KDM 850Q. Should such criminal case have already been preferred, then the Court seized of the criminal case shall be the one deal with all issues relating to detention of the said motor vehicle or holding of the Applicant in custody by the police or in remand custody or the granting of bail or bond.
 - v. If the Applicant paid the cash bail granted to him by this Court on interim basis on 29/01/2024, then he shall forthwith be refunded the amount paid.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF JUNE 2024

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:-

Mr. Mugun for the State

N/A for Applicant

