



Kadil v Attorney General & 3 others (Constitutional Petition E002 of 2023) [2024] KEHC 11689 (KLR) (1 October 2024) (Judgment)

Neutral citation: [2024] KEHC 11689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CONSTITUTIONAL PETITION E002 OF 2023**

KW KIARIE, J

OCTOBER 1, 2024

BETWEEN

MAURICE OTIENO KADIL PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

PETER TINEGA 3RD RESPONDENT

OCS HOMA BAY POLICE STATION 4TH RESPONDENT

JUDGMENT

1. Maurice Otieno Kadil, the petitioner herein, filed a petition dated the 5th day of July 2023, which he subsequently amended on the 23rd of August 2024. He is seeking the following orders:
 - a. A declaration that the petitioner’s constitutional right of having his property not arbitrarily seized is guaranteed under Article 31(b) of the Constitution has been violated and infringed by the 3rd respondent.
 - b. A declaration that the petitioner’s constitutional right to acquire and own property of any description and in any part of Kenya as guaranteed by Article 40 (3) of the Constitution has been infringed and/or violated by the 3rd respondent.
 - c. A declaration that the Seizure by the 3rd respondent of the petitioner’s motor vehicle EX GKA 176E chassis number JNICJUD22Z0023475 without his consent and without giving any notice to that effect is contrary to the Constitution.
 - d. Restitution of the petitioner’s motor vehicle and prohibitory orders to the 3rd respondent from seizing and/or detaining without following due process of the law.



- e. General damages for illegal seizure and damage to the vehicle include deflating the tyres and detention of the motor vehicle.
 - f. Costs and interest of this petition.
2. The petition was premised on the following grounds:
- a. Impounding the petitioner's motor vehicle, which was driven without proper number plates when the car was duly insured using the chassis number, and all sell documents, some issued by the government, were presented.
 - b. Having shown that the government owned the vehicle before its sale to the previous owner, who sold it to the petitioner again, demonstrating that all the relevant documents were available and the tedious registration process was ongoing.
 - c. Damaging the vehicle by inflating all the tyres and damaging the ignition lock.
 - d. Detaining the said vehicle without preferring any charge against the petitioner or even giving a Notice of intention to sue.
3. The petition was opposed by the respondents, who raised the following grounds:
- a. That the amended petition is bad in law, defective, misconceived, and is an abuse of the process of this honourable court as it seeks to sue 3rd Respondent Peter Tinega unjustly.
 - b. That the complaints are vague and generalized and cannot be the basis of any finding of a constitutional violation.
 - c. The Petitioner has not exhausted all available statutory avenues for resolving this dispute, thus rendering this application premature and dead on arrival.
 - d. That the 3rd respondent, the former OCS Homa Bay Police Station, has been transferred to Nairobi Railways Police Station; hence, cannot, therefore, be sued in respect of any action undertaken on behalf of the office being Homabay Police Station as he cannot be sued individually.
 - e. That the Petition has not met the statutory threshold prescribed by law.
 - f. That the petition ought to be dismissed with costs to be respondents.
4. The motor vehicle in issue was previously registered as GKA 176E. Felimax Onyango Ouma purchased it at a public auction on August 3, 2020, and subsequently sold it to the petitioner on February 23, 2023. At the time of the sale, Felimax had not transferred it to his name.
5. When the subject motor vehicle was impounded, it was being driven on a public road. According to the petitioner, this was illegal, for he had insured the motor vehicle using the chassis number.
6. The 3rd respondent, who was the then OCS Homa Bay police station, contended that the motor vehicle was on the road illegally and contravened section 9 (1) of the *Traffic Act*, which states that:
- No motor vehicle or trailer the ownership of which has been transferred by the registered owner shall be used on a road for more than fourteen days after the date of such transfer unless the new owner is registered as the owner thereof.
7. I concur with the respondent that the petitioner violated this section of the law.



8. Section 12 (1) of the *Traffic Act* provides:

No motor vehicle or trailer registered under this Act or driven under the authority of a general dealer's license shall be used on a road unless there is fixed thereto in the prescribed manner the prescribed number of identification plates of the prescribed design and colour on which is inscribed the identification mark of the vehicle or of the general dealer's licence:

Provided that identification plates used under the authority of a general dealer's license may be suspended from the vehicle and not fixed.

9. The subject motor vehicle was driven on a public road without the prescribed number plates, making the use illegal.
10. The petitioner also complained that the deflation of tyres damaged his motor vehicle. It was not demonstrated how the damage amounted to the motor vehicle.
11. When a motor vehicle is on the road when it is not supposed to be, as required by the law, police officers have a duty to remove it until it is compliant. This is what the third respondent in this case did.
12. From the preceding analysis, the petition is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 1ST DAY OF OCTOBER 2024

KIARIE WAWERU KIARIE

JUDGE

