



Unique Distillers Limited v OCS Ruiru Police Station & another (Criminal Miscellaneous Application E060 of 2022) [2023] KEHC 18818 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL MISCELLANEOUS APPLICATION E060 OF 2022**

**PM MULWA, J
JUNE 15, 2023**

BETWEEN

UNIQUE DISTILLERS LIMITED APPLICANT

AND

OCS RUIRU POLICE STATION 1ST RESPONDENT

REPUBLIC 2ND RESPONDENT

RULING

1. In its notice of Motion dated December 16, 2022 and filed on the even date, the applicant herein prayed for a mandatory injunction order of the release of the Motor Vehicle KAZ 330G. The application is supported by the annexed affidavit of Simon Mukiri sworn on December 16, 2022. He depones that he is the director of the Applicant and the owner of the motor vehicle KAZ 330G, which is his only tool of the trade and that the same has been illegally detained at Ruiru Police Station in connection to Criminal Case No 1773 of 2022 where it is wasting away. He continues to suffer mentally and economically as his business has come to a halt and he incurs immense losses.
2. In the further affidavit the applicant depones the motor vehicle committed no offence which the driver was accused of. The goods confiscated do not belong to the applicant, and that it was not charged with any criminal offence and thus the detention of the motor vehicle is grossly wrong. The deponent contends that he will avail the motor vehicle as and when needed to prevent it from wasting away and being vandalized.
3. In opposing the application, the Respondents filed a joint Replying Affidavit sworn by PC Onesmus Biketi and filed on February 7, 2023. He depones the driver of the motor vehicle KAZ 330G was apprehended on October 17, 2022. The officers of the Kenya Revenue Authority (KRA) lawfully seized and detained the vehicle and counterfeit goods as per Regulations 30 and 33 of the [Excise Duty Act](#). The motor vehicle is yet to be adduced as an exhibit in court. The interest of justice will be defeated



as the accused person has absconded the court severally. The decision to investigate, impound and prosecute in Criminal 1773 of 2022 was well reasoned and in line with the *Constitution of Kenya* and the *Office of the Director of Public Prosecutions Act*. He urged the court to dismiss the application until Criminal Case No E1773 of 2022 is heard and determined.

4. The court directed that the application be canvassed by way of written submissions, only the applicant filed written submissions.

Applicant's Submissions

5. By submissions dated March 2, 2023 and filed on March 6, 2023, counsel submits the applicant is not a party to the criminal case and neither is he privy to the circumstances of the case. The continued detention of the Motor Vehicle is intended to punish the applicant. That there is no justifiable reason for the continued detention of the motor vehicle. Justice requires that parties get unlimited access to their property. He urged the court to order the release of the motor vehicle.

Analysis and Determination

6. In due consideration of the application, the affidavits in support and in response to the application and the Applicant's submissions, the issue in dispute is whether this court should issue a mandatory injunction order for the motor vehicle.
7. The police and the Director of the Public Prosecution are vested with the powers to conduct investigations before the prosecution of any individual. The Respondents submit the motor vehicle KAZ 330G is an exhibit in Ruiru Criminal Case 1773 of 2022 which is pending hearing and determination. The motor vehicle was seized with counterfeit goods, which were being transported by the driver.
8. Additionally, the applicant submits that he is not privy to the criminal case and neither is he a party, the motor vehicle does not form part of the counterfeit goods and prayed that the court allows the release of the motor vehicle as the same is wasting away.
9. The motor vehicle was seized and detained when it was transporting assorted alcoholic drinks some affixed with counterfeit excise duty stamps and others not affixed with excise duty stamps. The driver was charged in Ruiru Criminal Case No 1773 of 2022 which is pending trial. The motor vehicle in question was detained as it was used to transport the counterfeit goods.
10. Section 23 (c) of the *Anti-Counterfeit Act* No 13 of 2008 empowers the inspectors to seize, detain or remove for detention all the goods found at the premises or vehicle.
11. The Court of Appeal in *Kenya Breweries Ltd & Another v Washington O. Okeyo* [2002] eKLR, held thus;

“A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”



12. The Respondent submits the motor vehicle is an exhibit and the same is yet to be adduced in court. The investigating officer has a duty to present the exhibits before the court at the hearing. This is done either by way of photographs or the actual motor vehicle. There is no intimation that photographs have been taken by the investigating officer. The release of the motor vehicle has been opposed by the investigating officer who informs the court the driver has absconded court and warrants of arrest have been taken out. This court will therefore not interfere with the exhibits of the trial court which are yet to be adduced in evidence.
13. It is trite law this court should not make orders that would prejudice justice in the trial court.

Final Orders

14. The application herein is lacks merit and the same is dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU ON THIS 15TH DAY OF JUNE, 2023.

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P.M. MULWA

JUDGE

In the presence of:

Kinyua – court assistant

Mr. Kimani – for the applicant

Mr. Muriuki (SC) – for the respondents

