



Mwaura v OCS Kayole Police Station & 3 others; Kimani (Interested Party) (Criminal Revision E128 of 2022) [2023] KEHC 24005 (KLR) (Crim) (24 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24005 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E128 OF 2022
DR KAVEDZA, J
OCTOBER 24, 2023**

BETWEEN

JAMES MBURU MWAURA APPLICANT

AND

OCS KAYOLE POLICE STATION 1ST RESPONDENT

ASTORIAN AUCTIONEERS 2ND RESPONDENT

NATIONAL TRANSPORT AND SAFETY AUTHORITY 3RD RESPONDENT

HARUN WAHOME KAMAU 4TH RESPONDENT

AND

STEPHEN GIKARU KIMANI INTERESTED PARTY

(Being an application for revision of the ruling delivered by Hon. F. Kyambia on 27th June 2022 at Makadara Chief Magistrate's Court Misc. Criminal Case No. 890 of 2020 James Mburu Mwaura vs Kayole Police Station & 3 others)

RULING

1. The applicant filed a notice of motion dated 14th July 2022 seeking orders that the 2nd respondent be directed to deposit in court the full proceeds of the sale of motor vehicle registration number KBW 918R after filing proper accounts. He also prayed that an injunction do issue against the 3rd respondent, stopping them from registering a transfer of the said motor vehicle in favour of the 4th respondent. In addition, he prayed that the court revise the ruling delivered on 27th June 2022.



2. The application is supported by grounds on the face thereof which are reiterated in the undated affidavit sworn by the applicant. The averments made are that he is the registered owner of the motor vehicle registration number KBW 918R. The motor vehicle was placed in the custody of the 1st respondent for preservation pending the determination of a civil dispute (Milimani Chief Magistrate's Court civil case no. 4042 of 2018 James Mburu Mwaura vs Stephen Gikaru Kimani). Before the determination of the case, the 1st respondent allegedly erroneously applied for its disposal as an unclaimed asset. An auction was held and the 2nd respondent sold the motor vehicle to the 4th respondent.
3. Vide an application dated 22nd March 2021, the applicant prayed that the OCS Kayole police station trace the motor vehicle and preserve it pending the determination of the civil dispute in court. The motor vehicle was traced and returned to the police station. The applicant conducted an assessment as some of the parts were missing. In a ruling delivered by Hon. F. Kyambia, on 27th June, 2022, the court found that the sale was unlawful. He urged the applicant to seek civil remedy for compensation with respect to the missing parts. He also directed the applicant to collect the remains of the vehicle from the police station.
4. The applicant now challenges the impugned ruling of 27th June 2022. He argues that the court failed to pronounce itself on the missing parts. In addition, the court failed to issue an injunction against the 3rd respondent. He contends that the court also failed to pronounce itself on the issue of contempt of court. He argues that the magistrate's court failed to consider the evidence supplied.

Analysis and determination.

5. The power of this court in its revisionary jurisdiction is founded under Section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy itself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Article 165(6) of *the Constitution* provides that:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.

6. Consequently, this court has jurisdiction to entertain the application before me. In the instant application, the applicant sought a revision of the ruling delivered on 22nd June 2022 directing the applicant to seek a civil remedy for compensation. He is also seeking injunctive relief against the 3rd respondent not to transfer ownership of the subject motor vehicle.
7. In the premises, the key issue for consideration is the question of whether the proceedings of the lower court and the ruling can be faulted in terms of correctness, legality or propriety.
8. From the record, the trial court considered the application, the response thereto and the evidence on record. It is manifest from the foregoing that the learned magistrate reached his decision after giving due consideration to the respective positions taken by the parties before him. The applicant was therefore given opportunity to articulate its case before the ruling was delivered.
9. The applicant has attempted to challenge the application on the merits of the decision arrived at by the learned trial magistrate. For instance, the that the trial court erred failed to grant orders of injunctive



relief to stop any transfer of the vehicle by the 3rd respondent. He also lamented that the court failed to consider the evidence on record before making a determination on his application. My considered view however is that, when it comes to perceived errors in the appreciation of the facts of a particular case and the application of the law to those facts, the trial magistrate's decision can only be competently challenged on appeal.

10. The upshot is that I find nothing in the record of the subordinate court that shows there was an illegality, irregularity, or impropriety in the proceedings or the orders made by the court. In the result, therefore, I find the application for revision dated 14th July 2022 is completely devoid of merit. The same is hereby dismissed.

It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 24TH DAY OF OCTOBER 2023

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D. KAVEDZA

JUDGE

In the presence of:

