



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI-NAIROBI**

**MISC CRIMINAL APPLICATION NO. E400 OF 2021**

**HORI ENTERTAINMENT.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT**

**RULING**

The applicant under certificate of urgency moved this court pursuant to the provisions of articles 19 (1) (2) & (3), 20 & 21, 165 (3) (a) 40 (1) (a) & (b) of the 2010 Constitution of Kenya and all other enabling provisions of the Law, seeking the following orders.

- 1) Spent
- 2) An order directing that a Nissan Juke, red colour, registration No. KCQ 710M be presented before the court by the Officer Commanding Kilimani police station at the earliest opportunity.
- 3) An order directing that a Nissan Juke, red colour, registration No. KCQ 710M be released to the applicant.
- 4) That the court makes such other order as it deems just.

The application is based on four (4) grounds that appear on the face of the notice of mention, with the major grounds being the following. The applicant is the registered owner of the subject motor vehicle. In mid-August 2020 some men in plain clothes stopped the drive of the subject motor vehicle along Ngong Road in Nairobi. They claimed to be police officers. They took charge of the vehicle and claimed that the vehicle was needed at Kilimani police station for some investigations. Upon arrival at the police station the driver was not called by the police to write a statement or least be given a chance to prove ownership. Upon following up the matter, the applicant realized that the vehicle has gone missing from the police station and the officers there are not willing to offer any lawful explanations about the disappearance.

In addition to the foregoing grounds, the application is supported by a fifteen (15) paragraphs supporting affidavit of the company's general director (Yuki Kashiwagi); whose major averments are as follows. He has deposed that he is the sole proprietor of the company. The company instructed Messrs Kanyoko & co. Advocates to act for it. The company is the registered owner of the subject vehicle, a matter in respect of which he has annexed a copy of the log book marked "YK" to his affidavit. He carried out a search at the National Transport and Safety Authority (NTSA) portal which confirmed the company was indeed the owner of the vehicle; in respect of which he has annexed a copy of the search certificate marked "YK3" to his affidavit.

Furthermore, the other averments are replicated on the face of the notice of motion as grounds in support of the motion and I have declined to reproduce them herein except for the following matters. The company has been denied the right of ownership and that the forceful take over by the agents of the 2<sup>nd</sup> respondent's agents/servants in unlawful and a breach of their rights to own property in Kenya. The company prays that the orders sought be granted as this will not occasion any prejudice to the respondents.

**The submissions of the applicant.**

The applicants did not make any submissions in support of their application.

**The case for the respondents.**

The respondents did not file any replying affidavit. They also did not file any submissions, despite being granted the following adjournments.

On 16<sup>th</sup> November 2021 Ms Kibathi for the respondents applied for and was granted an adjournment for three days to enable her file a response. The applicant's counsel did not object. On 23<sup>rd</sup> November 2021 Ms Joy for the respondents applied and was granted an adjournment for 7 days to enable her file a replying affidavit. The court pointed out to counsel for the respondents that this was the last adjournment.

Again on 8<sup>th</sup> November 2021 Ms. Chege for the respondents applied for and was granted an adjournment for yet another 7 days. On this date Mr. Kanyoko applied for a ruling date bearing in mind that the respondents had failed to file a replying affidavit; despite having been granted three adjournments. Ms Joy again applied for adjournment for seven days, which I declined to grant. Instead I set down the application for a ruling on 17<sup>th</sup> February 2022. I changed this date to 14<sup>th</sup> February 2022 because on 17<sup>th</sup> February 2022 I will be in a training session.

**Issues for determination.**

I have considered the unopposed application. I find that the affidavit of the applicant is credible that police officers from Kilimani police station stopped the driver of the subject vehicle and ordered it driven to Kilimani police station, where it was detained. Those police officers told the driver that the said vehicle was wanted for some investigations. The applicant was not told the nature of those investigations.

Thereafter the applicant realized that the vehicle had gone missing from the police station and the officers there were not willing to offer any lawful explanations about its disappearance.

In the premises, I find that the applicant has succeeded in its application and I hereby allow their application in terms of prayers No.2 and 3 of the notice of motion dated 8<sup>th</sup> November 2021.

**RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF FEBRUARY 2022.**

**J M BWONWONG'A**

**JUDGE**

In the presence of-

Mr. Kinyua court assistant

Mr. Kanyoko for the applicant

Ms. Joy for the Respondent.