



REPUBLIC OF KENYA

IN THE HIGHER COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CRIMINAL APPLICATION NO. E 154 OF 2021

HUMPREY OTIENO OTIENO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

RULING

1. The applicant has moved the court vide a notice of motion application dated; 19th January, 2021, filed pursuant to the provisions of; Article 40, 49 and 50 of the Constitution of Kenya, 2010 and all the enabling provisions of the law.

2. He is seeking for orders as here below reproduced: -

a) The Honourable court do issue an order that the OCS of Kilimani Police Station and Police Constable No. 75447; Andrew Maina be cited for contempt of court;

b) The Honourable court be pleased to issue summons for the attendance of the OCS of Kilimani Police Station and Police Constable No. 75447; Andrew Maina;

c) In the alternative and without prejudice to foregoing the Honourable court be pleased to issue orders directing the OCS of Kilimani Police Station to enforce the Court order dated; 29th June 2021;

d) The Honourable court be pleased to issue orders directing the OCS of Kilimani Police Station and Police Constable No. 75447; Andrew Maina to; reinstate the actual possession of the motor vehicle registration number KBJ 938F Volkswagen Golf to the applicant;

e) The Honourable Court be pleased to commit the OCS - Kilimani Police Station and Police Constable No. 75447; Andrew Maina to civil jail for disobedience of court orders.

f) Any further orders the court may deem expedient in the interest of justice

g) The costs be in the cause.

3. The application is supported by the affidavit of the applicant wherein he avers that, on the 23rd day of June, 2021, the court issued several orders in this matter, which were served upon the Officer Commanding Kilimani Police Station for compliance.

4. However, the officer has utterly, deliberately and blatantly disregarded the subject court order and declined to release the vehicle which is the subject of this matter to him, as ordered by the court, despite the several visits made to the station by him and/or his lawyer.

5. That, he is suffering irreparable harm, as the where-about of the motor vehicle is unknown. Further, court orders are not issued in vain and neither are they mere suggestions. Therefore, it is in the interest of justice that, the officer be cited for contempt.

6. However, the Respondent filed an undated replying affidavit, sworn by; No. 236357, P.C Calorine Akinyi, in which she avers that; following the subject court order, the motor vehicle has been traced and detained at an exhibit yard vide; OB No. 03/26/10/2021.

7. Further, the matter has been allocated to another investigating officer to conduct the investigations. Therefore, the allegations that, the court orders have been disobeyed are not true. That the delay in complying with the court order was occasioned by the absence of the Officer Commanding Station who was served with the order and is on leave. That, the matter was only brought to her knowledge on, 15th October 2021, and once investigation is over, appropriate action will be taken.

8. I have considered the arguments advanced by the parties and I find that, it is clear that, each party holds different views. Whereas, the applicant avers that, there has been no compliance with the court orders, the Respondent deposes to the contrary.

9. As such, to establish beyond reasonable doubt as to whether, the court orders issued herein have been complied with or not, I direct that the deponent of the replying affidavit, No. 236357, P.C Calorine Akinyi, be summoned to appear in court to inform the court and support the same, with evidence on, the nature and extent of compliance with the subject court orders, so that, the court can conduct an audit on the check list of the orders issued to confirm compliance and/or otherwise thereof.

10. The Hon Deputy Registrar shall extract this order and serve it upon the deponent forthwith and/or the Respondent shall bring the order to her attention. The matter will be mentioned on 11th February 2022 for further orders.

11. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 8TH DAY OF FEBRUARY, 2022

GRACE L NZIOKA

JUDGE

In the presence of:

Mr Swaka for the Applicant

Mr Kiragu for the Respondent

Edwin: Court Assistant