



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 258 OF 2019

ALFRED DANIEL MBATI.....1ST PETITIONER

AGGREY ASIBIKO.....2ND PETITIONER

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. Through the notice of motion dated 21st June, 2019, Alfred Daniel Mbatl (the 1st Petitioner) and Aggrey Asibiko (the 2nd Petitioner) prays for an order directing the 1st Respondent, Inspector General of Police to release their motor vehicle registration Number KAL 112Z pending the hearing and determination of the petition. The Director of Criminal Investigations is the 2nd Respondent whereas the Attorney General is the 3rd Respondent.

2. The petitioners' case in brief is that the 1st Petitioner purchased motor vehicle registration number KAL 112Z from Moran Auctioneers in a public auction conducted on 25th February, 2017 at Kenya Bus Service Management Garage at Kawangware. The 1st Petitioner who swore the affidavit in support of the application avers that he registered the motor vehicle with Ebeneza Sacco and repaired it so that it could be fit for long distance operations. The motor vehicle operated the Nairobi-Busia route for one year.

3. According to the 1st Petitioner, his motor vehicle was later impounded and taken to Buruburu Police Station. He avers that he is not aware of any ownership dispute. He therefore terms the police action malicious and prays for an order directing the release of his motor vehicle.

4. The respondents oppose the application and the petition through the replying affidavit of Police Constable Nicholas Mwangi Njenga who introduces himself as the investigating officer in the matter. I will only refer to his averments that are relevant to the instant application.

5. Police Constable Njenga avers that motor vehicle registration number KAL 112Z a Mitsubishi bus orange in colour was impounded by police officers who were acting on information. He conducted investigations and discovered that the logbook he was given belongs to a blue station wagon Mitsubishi registration Number KAL 112Z registered in the name of the 1st Petitioner. He was, however, later informed that the errors in the logbook had been corrected by the National Transport Safety Authority (NTSA).

6. The 1st Petitioner filed a further affidavit on 25th October, 2019 in response to the application.

7. I have seen the submissions filed by the parties and I find that they are predominantly in respect of the petition and not the application.

8. The only question that needs to be answered in this ruling is whether the petitioners have established grounds for grant of the order sought.

9. The petitioners' application is in the nature of an application for conservatory orders. The questions to be answered is whether they have established an arguable case and whether they will suffer any prejudice if the order prayed for is not granted.

10. I will be guarded so as not to prejudice the positions of the parties or embarrass the Judge who will hear the petition. I, however, note that

the respondents have not disclosed the source of the information that led to the decision to impound the petitioners' motor vehicle. The petitioners have provided evidence that they bought the motor vehicle in a public auction. The anomalies noted in logbook were corrected by NTSA. NTSA is the body responsible for registration of vehicles. Based on those facts, it becomes apparent that the petitioners have an arguable case.

11. It is indeed correct that the petitioners' motor vehicle was not on the road at the time it was impounded. That should not however be the basis for holding the motor vehicle. The owner of a motor vehicle has a right to do whatever they desire to do with their vehicle. Maybe the petitioners were looking for money so as to repair the vehicle. It is therefore prejudicial to hold onto their vehicle for over one year in the pretext of carrying out investigations. As such, the petitioners have demonstrated that they will irreparable injury if the police continue to keep the motor vehicle.

12. Where does the public interest lie? If the petitioners eventually succeed, any damages that may be awarded will be calculated based on the period the motor vehicle has been in the custody of the respondents. The longer the motor vehicle stays with the police the more expense it will be for the taxpayers. It is therefore in the public interest that the motor vehicle be released.

13. For the reasons stated above, I allow the application dated 21st June, 2019. The petitioners are directed not to dispose of the vehicle pending the hearing and determination of their petition. The respondents be at liberty to take photographs of the vehicle for use in any further investigations they may desire to carry out.

14. The costs of the application shall abide the outcome of the petition.

Dated, signed and delivered virtually at Nairobi this 7th day of May, 2020.

W. Korir,

Judge of the High Court