



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CRIMINAL APPLICATION CASE NO. 160 OF 2020**

**ENOS MUNDAYI.....APPLICANT**

**VERSUS**

**INSPECTOR OF POLICE ..... 1ST RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION.....2<sup>ND</sup> RESPONDENT**

**RULING**

This matter is for the application of the applicant, ENOS MUDANYI dated 26.5.2020. The same basically seeks that the 1<sup>st</sup> Respondent be ordered to release motor vehicle registration number KCW 731L, held at Kikuyu police station to the applicant upon such conditions that the honourable court may impose. The application is opposed by the Respondents.

Mr. Swaka for the Applicant pleaded that applicant, being a dealer in motor vehicles, had leased out his motor vehicle KCW 731L to one Dafton Mwatiki sometime in February 2020. That he later only learnt that 4 men had been shot dead along Ngong Road and that his motor vehicle had been involved in the incident. That on 11.3.2020, the said Mr. Waitiki was also reported missing and his vehicle later recovered along Juja Road. The applicant claimed no knowledge of the shooting incident and that he had furnished the investigating officer with all the necessary material necessary for the investigations. Lastly, that he needs the motor vehicle back so as to use same in eking out a living.

The Respondents opposed this application. That the police are investigating a case of kidnapping and despite being asked to name the person he leased his vehicle to, the applicant has failed to do so. That the motor vehicle could be proceeds of crime just like the alleged Mpesa transactions. Lastly, that after learning of the shooting incident, the applicant went underground only to resurface a month later.

I have considered the submissions of both sides. It is clear that the applicant's motor vehicle KCW 731L is detained at Kikuyu Police station pending determination of investigations into a shooting incident of 29.2.2020 along Ngong Road. In the incident, it is claimed that up to 4 men were shot dead after an alleged kidnapping of a Chinese national Gao Yvanhong. A reason of 10 million shillings had allegedly been demanded by the kidnappers. And the subject motor vehicle was allegedly been involved in the incident. Another declaration made in the submissions of the applicant, is that one Dafton Mwaniki, who had hired his motor vehicle was also reported missing on 11.3.2020.

Without doubt, the investigations being undertaken by the police are of very serious crimes, being kidnappings. The investigating officer, corporal Juliu's Oguma in his sworn affidavit in objection to this application at paragraph 11, 12 and 13 has deponed to the fact that the applicant has failed to submit the necessary documents of contract of hire relating to this motor vehicle, and that this information is crucial in the investigations.

This court is of the considered view that for the applicant to benefit from the orders he seeks from this court, he must show and convince this court that he has co-operated fully with the investigating officers. He should be able to furnish all the relevant material and information that the investigating officers may require which are in his possession. Ordering the release of this motor vehicle at this stage would therefore have the effect of frustrating the course of investigations into the obviously serious incident. That would be against the rule of law.

In the circumstances, and taking into account the fact that these investigations have been on from February 2020, and also the fact that the motor vehicle was probably used by the applicant for business, I decline to grant the orders sought. I make the following orders:-

(i) THAT the applicant do present himself to the investigating officer and furnish him with all the relevant documents in his possession regarding this matter particularly details of the said motor vehicle hire contract.

(ii) THAT upon submission of the said information (i above) to the investigating officer, the investigating officer is hereby ordered to take photographs of the motor vehicle KCW 731L and release the same to the applicant.

(iii) THAT should the motor vehicle be released to the applicant, the applicant to undertake not to dispose of the same till this matter is determined or until any specific orders allowing for the same are issued by the court.

(iv) THAT either party to be at liberty to apply for any further orders from this court regarding this matter as may be necessary.

**D. O. OGEMBO**

**JUDGE**

**17.7.2020**

Court:

Ruling read out in presence of Ms. Kamau for Swaka for the applicant and Ms. Kibuthi for the respondent.

**D. O. OGEMBO**

**JUDGE**

**17.7.2020**