



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL CASE NO. 20 OF 2018

EVERLINE MUGE APPELLANT

VERSUS

REPUBLIC RESPONDENT

(An Appeal from the Ruling of the Resident Magistrate Honourable D. Milimu in Eldoret Chief Magistrate's court Misc. Criminal Case No. 42 of 2018 dated 23rd March, 2018)

JUDGMENT

INTRODUCTION

The appellant was aggrieved by the ruling of *Hon. D. Milimu* delivered on 23rd March 2018. The appellant had applied to have a motor vehicle registration No. KBP 201S held by the DCIO Eldoret released to her. The court declined to release the vehicle as there was no proof of ownership and therefore it would not have been prudent to release the car without proper documentation.

APPELLANT'S CASE

The appellant submitted that she had lodged a complaint against *Sammy Bitok Kitur* and the motor vehicle was taken into custody of the DCIO – Eldoret. She wanted the vehicle she had offered for investigation released to her due to failure of the investigation officer to charge the suspect. The signatures which had been forged had been investigated and a report given to the investigation officer but they were not acted upon. The magistrate failed to address the issue of delay and who had made the complaint.

The appellant further submitted that she should have been given the vehicle as she was the one who took it to the police. The delay has denied her justice as requested by law.

PROSECUTION'S CASE

The prosecution did not file any submissions.

ISSUE FOR DETERMINATION: WHETHER THE RULING BY THE TRIAL COURT SHOULD BE VARIED

A perusal of the court record shows that there is an order by the CM for the detaining of the car and the same has not been set aside. The appellant sold the car to one *Anderson Kipruto Kipkoech* as per the replying affidavit of *Isaac Mukambi* in the application in the lower court.

The appellant did not produce any proof of ownership and further, she provided proof that she had sold the vehicle to *Anderson Kipruto Kipkoech* therefore she seems to have made an application to have a vehicle that is not hers released.

There has been no proof of ownership produced by the appellant therefore no reasons to warrant the vehicle to be released to her. The ownership of the vehicle is contested as there is an issue of forgery of the logbook.

In **John Syimonjero v Directorate of Public Prosecution & Another (2018) eKLR** the court held:

The established practice in our courts is that a motor vehicle would normally be released to the owner on condition that it would be availed whenever required by the court. Such practice which I entirely agree with in the present case, was succinctly stated by my senior sister Muchemi J in **Republic V John Nganga Mbugua** cited above in the following terms:-

“It is the practice in criminal cases that photographs will be taken by the scene of crime personnel of exhibits and scenes of

