



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL & JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW NO. 75 OF 2018

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS UNDER SECTION 8 AND 9 AND ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF: THE LAW REFORM ACT, CAP 26

AND

IN THE MATTER OF: MOTOR VEHICLE REGISTRATION NO. KCB 935N CHASSIS NO. NT30-206773

BETWEEN

JOSEPH OUMA MUDEMB.....APPLICANT

AND

OCS LIKONI POLICE STATION.....RESPONDENT

RULING

The Application

1. The Notice of Motion application before the court is dated 2nd November, 2018. The Applicant prays for the following orders:

That the Ex-parte Applicant be granted judicial review orders of:

- a) MANDAMUS removing to this court and quashing the decision of the Respondent, his servants, agents or representatives from detaining the exported applicant's Motor vehicle Registration NO. KCB 935N CHASSIS NO NT30-206773 Nissan X-TRAIL.
- b) That costs be to the ex-parte application.

2. The Ex parte Applicant's case is that he is the registered owner of Motor vehicle Registration NO. KCB 935N CHASSIS NO NT30-206773 Nissan X-TRAIL. (He annexed a copy of log book). The Applicant states that sometime in 19th April 2017 while on his way from Diani area, upon arrival at Likoni area in Mombasa County he was arrested by a police officer one CHARLES ONYANGO who informed the Applicant that he was signalled by his seniors to detain the said Motor vehicle Registration NO. KCB 935N CHASSIS NO NT30-206773 Nissan X-TRAIL at Likoni police station. Accordingly the said officer detained the motor vehicle without any lawful or legal ground. He parked the said motor vehicle at Likoni police station and left it there. The Applicant states that he has made several visits to Likoni police station to collect the said motor vehicle but all in vain. The Applicant states that he proceeded to the D. C. I.O Likoni police station on 20th February, 2018 and requested him to allow the Petitioner to take his motor vehicle. The DCIO advised the Petitioner to proceed to court and obtain a court order since the DCIO did not see the reasons for detaining the said motor vehicle. The Petitioner states that his motor vehicle is parked at Likoni police station and it is in a dilapidated state. If it continues to be there then the Petitioner stands to suffer loss as it will be damaged, worn out and/or get vandalized. The Petitioner avers that the Respondent's action will lead to him being deprived of the suit property without any compensation, and that the Respondent's action aforesaid are unfair, irregular, un-procedural, unlawful and unjust. The Petitioner was not given any valid notice of the Respondent's intention to carry out the aforesaid acts. The Petitioner states that the Respondent's act is *ultra vires* the powers and statutory functions of the Respondent; that the Respondent's act complained of are unreasonable, irrational and a breach of the rules of natural justice; are in bad faith and constitute errors of facts and law.

The Response

3. The application is opposed by the Respondent vide a Replying Affidavit sworn by Charles Onyango Kagalo on 8th March, 2019. The deponent is a Police officer attached at the Directorate Criminal Investigation Likoni Mombasa in the Republic of Kenya, and performs investigative duties on behalf of the Respondent herein.

4. The deponent states that the Mombasa IC3 Command Centre circulated a motor vehicle Reg. No KCB 935N make X-Trail black in colour and requested the DCI Likoni personnel who were on night duty to intercept and detain the motor vehicle, because it was wanted by the OC Flying Squad Nairobi and the KRA. The Likoni DCI acted swiftly, intercepted the said vehicle which was moving towards Ferry crossing channel from Ukunda. They escorted it to Likoni Police station where it was booked vide OB NO.70 of 18/04/2017 pending collection by the Flying Squad and KRA. The Mombasa IC3 Command Centre was duly informed of the interception and subsequent detention of the said vehicle. OC Flying Squad Nairobi was also subsequently informed and asked to organize for collection of the same. The deponent depones that he sent out a signal dated 30/11/2017 to the OC Flying Squad in Nairobi requesting for collection of the said vehicle for further administrative action but no reply came and the vehicle has not been collected to date. (The deponent annexed a copy of the signal vide a letter marked as "COK – 1".) the deponent further avers that the DCIO Likoni Mr. Henry Ndombi wrote a further letter dated 1/3/2018 reminding the OC Flying Squad in Nairobi to collect the said vehicle or to give a way forward on the issue but no reply has been received to date. (The deponent annexed a copy of the letter marked as "COK – 2".) The deponent avers that on several occasions the DCIO Mr. Henry Ndombi and the deponent communicated with the then in charge Flying Squad Nairobi Mr. Saidi and his counterpart IP Chemilil as far as the detained motor vehicle was concerned. The deponent further states that he also communicated with one Mr. Momanyi of KRA and mobile No. 0724748916 on 22nd February, 2018 and forwarded the chassis number of the detained vehicle in question.

5. The deponent states that as far as this matter goes, their office merely acted on instructions of the Mombasa IC3 Command Centre who said that the vehicle was wanted by the OC Flying Squad Nairobi and the KRA personnel Nairobi. The said vehicle still safely lies at the station yard awaiting collection or further instructions from the OC Flying squad Nairobi and KRA Nairobi.

Submissions

6. Parties made oral submissions in court on 14th March, 2019 which I have considered. The issue I raise for determination is whether or not the Respondent has a reason to hold the said motor vehicle.

7. It is evident that the Respondent was diverted by the OC Flying Squad Nairobi to arrest that motor vehicle, which the OCS Likoni did. However, there was no further action on the matter and for almost two years the said motor vehicle is being held for no apparent reason. The Applicant has not been interrogated or charged with any offence in relation to the said motor vehicle. In my view, the Flying Squad has a right to arrest any motor vehicle which they think is being or could be used to commit an offence. However, once that arrest has been done there must be an action taken related thereto.

8. In the present case the arrest was done on 19th April, 2017. To date there is no communication on the issue. The Respondent has written at least two letters to the OC flying Squad in Nairobi asking for directions on the matter but those letters have not been responded to. Clearly, the OCS Likoni as the Respondent herein cannot do much.

9. In the circumstances this Court finds that the continued detention of the suit motor vehicle is illegal. Further, this Court is of the view that the owner of the suit motor vehicle is known, and the motor vehicle is also known. If the police happen to require either the owner of the motor vehicle or the said motor vehicle they can reach them.

10. For the foregoing reasons the Notice of Motion dated 2nd November, 2018 is merited and is granted as prayed except that parties shall bear own costs.

11. The result is that the said Motor Vehicle No. KCB 935N Chasis No. NT30-206773 Nissan X-Trail is forthwith released to the Ex parte Applicant.

Orders accordingly.

Dated, Signed and Delivered in Mombasa this 9th day of April, 2019.

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Mwandeje for Respondent

No Appearance for Applicant

Mr. Kaunda Court Assistant