

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MIS. CR. APPL. NO. 202 OF 2018

TITUS GICHIA NJERI.....APPLICANT

VERSUS

D.C.I.O KAYOLE DIVISION.....1ST RESPONDENT

D.P.P.....2ND RESPONDENT

RULING.

1. I have heard the respective rival submissions by the Applicant and the Respondents. One thing is not disputed, that the motor vehicle belongs to the Applicant. It is also an undisputed fact that the Applicant had nothing to do with its disappearance. Indeed, the culpable persons are already on trial at Makadara Chief Magistrate's Court in Cr. Case No. 866 of 2018.

2. I have heard, and it is also not disputed that photographs of the vehicle have already been taken. This is a precautionary measure that the investigating officer has taken in preserving the evidence in the criminal case. I take note that therefore, the continued holding of the vehicle by the police not only wastes the vehicle but also denies the Applicant a source of income.

3. The Applicant has submitted to any conditions that this court shall set. That alone, in addition to the fact that photographs have already been taken mitigates for the release of the vehicle. It buttresses the fact that no prejudice shall be suffered by the Respondents if the vehicle is released with some conditions. By extension, the pending criminal case stands not to be compromised. I accordingly make the following orders:

- a. That motor vehicle Reg. No. KBM 033B shall forthwith be released to the Applicant.
- b. The Applicant must produce the motor vehicle physically at the hearing of the trial on 26/7/2018 or any other time that he shall be required for purposes of identification of the same in the trial.
- c. The Applicant shall not dispose of the said motor vehicle before the conclusion of the trial unless with the express written permission of the investigating officer, one Sergeant Luke Leley.
- d. The orders be served upon the DCIO, Kayole and Sgt Leley for compliance.
- e. I make no orders as to costs of this application.

DATED and DELIVERED this 4th JUNE, 2018.

G.W. NGENYE-MACHARIA

JUDGE