



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL PETITION NO. 4 OF 2017

PIUS MUTUMA MBAYA.....PETITIONER

VS

HAMISI OMARI ABDALLA.....1ST RESPONDENT

O.C.S PARKLAND P/S.....2ND RESPONDENT

DCIO MERU P/S.....3RD RESPONDENT

DPP.....4TH RESPONDENT

JUDGMENT

The Petitioner Pius Mutuma Mbaya has filed this petition seeking that the court declares that his right to own and enjoy property has been violated and also seeks an order for release of his Motor Vehicle Registration KCF 615 Toyota station Wagon to be issued to OCS Parklands Police Station.

He also sought special and general damages for unlawful detention and loss of user of the said Motor Vehicle. Facts of the case are that Noor Ali Noor reported theft of his Motor vehicle at Parklands police station when he realised cheques issued to his cousin by a person who identified himself as a doctor at Aga Khan Hospital were fake when they went to deposit. Police traced the car with the petitioner herein. He was arrested and detained and motor vehicle also detained as exhibit.

Petitioner was later released on police bond to assist the police trace the person who 'sold' to him the motor vehicle as alleged. Noor Ali Noor was to provide the purchaser with vehicles original logbook, transfer forms, PIN certificate and copy of ID and all relevant documents after the bankers cheques issued were cleared.

This court sought to understand why the motor vehicle in possession of petitioner was detained and it was established that he alleged to have bought the motor vehicle from a person he was unable to lead police to and having been arrested and detained for being in possession of vehicle that was stolen and/or fraudulently obtained he went ahead to cause it to be registered in his name while the same was in court for determination and under police investigations. While the petitioner came to court to seek the courts assistance in affirming his rights to own and enjoy property, he acted in bad faith in going ahead to have his name registered as owner of a motor vehicle that was suspected to have been obtained fraudulently and/or stolen from the 1st Respondent.

The 1st Respondent was still having the original title to the said Motor Vehicle when petition changed ownership and the question is how he did it without having original document. The petitioner didn't show actual proof of consideration that he paid out either in cash or cheque or even electronic funds transfer to the alleged buyer within the short period that the car left the hands of 1st Respondent.

The petitioners claim under Article 40 of the Constitution in the view of this court cannot defeat the 1st Respondents right as his rights had not crystallized. The person he alleged to have sold to him the car was not the registered owner of the car and therefore had no authority to sell the car. Secondly he was told to help police trace the alleged vendor and instead he went and had himself registered as owner of car that was under investigations. Petitioner redress should be in claiming be refund of alleged purchase price from the alleged vendor. This petition cannot stand. Same is dismissed. Costs to 1st Respondent.

HON. A.ONG'INJO

JUDGE

JUDGEMENT SIGNED, DELIVERED AND DATED THIS 13TH DAY OF JULY 2018

IN THE PRESENCE OF:

C/A:- Penina

Petitioner: - Mr Ojiambo Advocate holding brief for 1ST Respondent

Ms Okello holding brief for Nelima for Petitioner.

HON. A.ONG'INJO

JUDGE

Mr Ojiambo

I pray for copy of judgment.

Order

Copying charges to be paid for supply of copy of judgment.

HON. A.ONG'INJO

JUDGE