



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 660 OF 2018

ANNOLD NYASINGA OGWENYI.....APPLICANT

VERSUS

DIRECTOR OF CRIMINAL INVESTIGATIONS.....RESPONDENT

THE OFFICER COMMANDING

LANGATA POLICE STATION.....RESPONDENT

RULING

1. I have heard the respective rival submissions. The application before me by Notice of Motion dated 2/11/2018 for an order of release of motor vehicle Reg. No. KBY 299Z Toyota NZE. There is no dispute that the vehicle is currently owned by the Applicant. The said motor vehicle was hired by Julius Githinji Macharia on 5/10/2018. The said hirer then went on a spree to sell the vehicle to a third party.

2. In my honest opinion, the third party that bought the vehicle did not exercise due diligence before undertaking the purchase. She should have conducted a search with the Registrar of Motor Vehicles which search would have revealed that the owner of the vehicle was not the seller.

3. Against this background, it can be injurious to punish the bona fide owner merely because of a mistake of an unscrupulous person. I sympathize with the buyer, but justice demands that the Applicant be accorded his rightful possession.

4. Although the investigating officer, Inspector Nathaniel Ambasa in his replying Affidavit alluded that investigations are ongoing with a possibility of an outcome that the Applicant may have colluded with Julius Githinji Macharia to sell the vehicle, those assertions are not supported by any evidence. Furthermore, the vehicle was impounded way back on 22/10/2018 within which period the police ought to have arrived at candid conclusions. Infact, it is not even disclosed what evidence the police have that links the Applicant to any alleged conspiracy. Even the period the investigations will take is not given. This implies that any further detention is merely intended to punish the Applicant. I see no need to further hold the vehicle as it is fast wasting. Evidence from any intended prosecution can be preserved through the orders I shall make.

5. I accordingly order as follows:

- a) That the DCIO Langata Police Station shall within 36 hours release motor vehicle Reg. No. KBY 299Z Toyota NZE to the Applicant.
- b) The Applicant shall give a copy of the Log Book and current Search Certificate to the investigating officer IP Nathaniel Ambasa.
- c) The investigating officer shall, within 36 hours cause photographs of the said motor vehicle KBY 299Z taken by a scene of crime officer which he shall preserve.
- d) The Applicant shall not dispose of the motor vehicle KBY 299Z without the express permission of the investigating officer.
- e) No orders of costs.

Dated and delivered at Nairobi This 13th Day of December, 2018.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of;

1. *Kimani for the Applicant*

2. *M/s Nyauncho for the Respondents.*