



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.449 OF 2016**

**VEEW DISTRIBUTORS LIMITED.....APPLICANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Veew Distributors Limited is the owner of the motor vehicle Registration No.KAV 401K. According to Peter Chege Ngugi, the Applicant's Operations Manager, the said motor vehicle was detained at Kasarani Police Station on 21<sup>st</sup> October 2016 on allegations that the driver Erick Makau Musyoka and the saleslady Gladys Riziki Lebasha had contravened **Section 43(a)** of the **Alcoholic Drinks Control Act** by distributing alcoholic beverages within an area they were not licensed to. The said driver and saleslady were charged before the Makadara Chief Magistrate's Court. The pleaded not guilty to the charge. The case is still pending hearing and determination. The Applicant averred that the police had, without any justification, continued to detain the said motor vehicle at Kasarani Police Station. The Applicant is of the view that there is no reason why the said motor vehicle should continue to be detained at the said police station in light of the fact that photographs of the vehicle had already been taken by Scenes of Crime officers. Chief Inspector Kiruhi Muchemi, the Officer Commanding Station of Kasarani Police Station swore a replying affidavit in opposition to the application. He deponed that the said motor vehicle was being held at the police station awaiting its production in court as an exhibit. He denied the claim by the Applicant that the said motor vehicle was being unreasonably and unjustifiably held. He averred that upon its production in court, the court will give directions on how the motor vehicle will be dealt with.

During the hearing of the application, this court heard oral rival submission made by Mr. Mwaniki for the Applicant and by Ms. Nyauncho for the State. Learned counsel essentially reiterated the contents of the application and the affidavits sworn in support and in opposition to the application. The issue for determination by this court is whether the Applicant made a case for this court to grant the order sought in the application. This court has perused the proceedings of the trial court that is the subject of this application. This court notes that the trial court made no order whatsoever regarding the detention or otherwise of the subject motor vehicle. Upon evaluation of the facts of this application, it was clear to this court that there is no basis in law why the suit motor vehicle should continue to be detained by the police if photographs of the same have been taken by the Scenes of Crime officers. The issue that is the subject of the criminal case is breach of territorial licence. The prosecution alleges that the Applicant's employees distributed alcoholic beverages outside the territory they were licenced to distribute the same. Even if the said employees were to be convicted, it would not result in any adverse finding being made in respect of the subject motor vehicle. This court agrees with the Applicant that the continued detention of the subject motor vehicle at the said police station has no basis in law. If the Applicant will be required to produce the said motor vehicle in court during trial, it can be directed to do so without disrupting the Applicant's business.

The upshot of the above reasons is that the Applicant's application has merit and is hereby allowed. Motor vehicle Registration No.KAV 401K Isuzu D Max is hereby ordered released forthwith to the Applicant subject to the condition that the same shall be produced in court when so required during the

trial of the case before the magistrate's court. The criminal file shall be returned to Makadara Chief Magistrate's Court for the purpose of the trial. It is so ordered.

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY 2017**

**L. KIMARU**

**JUDGE**