



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC.CRIMINAL APPLICATION NO. 31 OF 2016
STANLEY WAWERU MAINA.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

The application for determination is dated 25th January, 2016 brought under **Section 23, 49(f)(i) of the Constitution, Section 78(1)** of the **Evidence Act** and all enabling provisions of the Law.

The main prayer is for the court to dispense with the physical production of motor vehicle Reg. No. KBJ 052V as an exhibit in a case reported at CID Provincial Headquarters and serialized as case file No. 112/2015 and in its place a photograph of the same be used and treated as evidence of equal importance/value to the production of physical motor vehicle. The Applicant also prays that upon grant of the aforesaid prayer, the court directs that the Respondent do release to the Applicant the said motor vehicle Registration No. KBJ 052V.

According to the Applicant, the motor vehicle is a matatu and while on routine duty, a conman purportedly sold it to a third party. The third party upon realizing he had been dubbed reported the matter to the police and a suspect by the name Evans Mwangi Maina was arrested and the vehicle seized by the police and placed under police custody. The said Evans Mwangi Maina was to be charged but that never happened.

When the matter came up for hearing before me on 17th February, 2016, learned Counsel Ms. Atina for the Respondent informed the court that the issue of the motor vehicle was under Police investigations and she required more time to allow the police to complete their investigations. According to Ms Atina, the matter had been reported at Kamukunji Police Station. The police there noted that the engine number of the vehicle had been tampered with and the registration number plate was self-made. The information from the National Transport and Safety Authority(NTSA) indicated that the Chassis Number belonged to a motor vehicle KBB 950M, was registered to operate under Kabras Sacco and was owned by one David Andalo Arumana. Investigations by NTSA further revealed that the owner of the vehicle KBJ 052V was registered to one Charles Gitau Nganga and was therefore operating as a matatu illegally.

The learned State Counsel was relying on a Replying Affidavit of Police Corporal Gerald Kamwaro, who is currently investigating the matter, sworn on 8th February, 2016 and a Further Replying Affidavit

sworn by himself on 16th February, 2016. The investigating officer had interrogated Mr. Arumana and it had been established that his vehicle Reg. No. KBB 950M was stolen from a parking lot within Malava on 31st March, 2014. A report had been made at Malava Police Station vide O.B. No. 3/1/4/14. Mr. Arumana had subsequently come to Nairobi and identified his vehicle with a TLB Licence on the windscreen issued to vehicle No. KBB 950M. The police also noted that the Applicant herein had reported at Nyahururu Police Station that his vehicle had been spotted at Nyahururu and he had offered to settle the matter out of court. Further, the officer investigating the case had confirmed that the Transport Licensing Board (TLB) License on the window of the vehicle KBJ 052V belonged to KBB 950M and that at the time it was released at Nyahururu Police Station it bore the Registration Number KBB 950M. In the circumstances, Ms. Atina submitted that the Applicant could not use the engine number to claim ownership of the subject motor vehicle as vehicle engines keep changing.

This court gave police time to conduct their investigations and one Corporal Gerald Kamwaro has since filed and compiled a report. The report though undated was presented to the court on 9th March, 2016. The summary of his investigations is very simple. The same have revealed that motor vehicle KBB 950M was stolen at Malava. The Applicant herein is a person known to have wide knowledge of motor vehicles and is a professional mechanic. He is believed to have changed the Registration Number of the suspect motor vehicle into KBJ 052V. It is recommended that he will be charged with the offence of theft of motor vehicle KBB 950M with an alternative count of handling stolen property. One, Evans Mwangi Maina will be charged with conspiracy to commit an offence, being defrauding one Benjamin Wambua whilst Cyrus Muchai Njuguna will be charged with obtaining by false pretences motor vehicle Reg. No. KBA 925A, Toyota Hiace Matatu from Daniel Maina Ngure.

In the circumstances, this application has no merit, is vexing to the court and an abuse of the court process. I say so because the Applicant is well aware of the circumstances surrounding the police investigations and he ought not to have filed the application in the first instance. The application is accordingly dismissed with no orders to costs.

DATED and DELIVERED in Nairobi this 10th day of **March, 2016**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. No appearance for the Applicant.*
- 2. Miss Wario for the Respondent.*