



IN THE HIGH COURT OF KENYA AT BOMET

PETITION NO. 9 OF 2016

DAVID CHELIMO.....PETITIONER

-VERSUS -

DIRECTOR OF CRIMINAL INVESTIGATIONS.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

OFFICER IN CHARGE COMMANDING

JUJA POLICE STATION.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

The Notice of Motion application dated the 29th day of September, 2016 seeks the following orders:

(a) Spent

(b) That the court be pleased to order the 1st, 2nd and 3rd Respondents to immediately release medical equipment to the petitioner pending the hearing of the petition.

(c) That the court do direct and order that the 2nd Respondents do pay the loss occasioned by the illegal detention of the medical equipment at the rate of Kshs.8,000/= per day for the period unlawfully kept.

The grounds are that the 1st and 2nd Respondents have declined to release the medical equipments without giving written reasons.

That the 1st and 2nd Respondents are doing so through the use of back-door and unconstitutional means which include the use of illegal and unprocedural methods, including threatening the applicant with prosecution.

This application is opposed on the grounds that on the 19th day of September 2016 one Daniel Kamau Kimani made a report vide OB No. 7 of 19th September, 2016 that his property had been stolen by one George Kinyua and later sold to a Doctor in Bomet.

That the stolen items are

(a) An Auto-clave machine

(b) Datex ohmeda Anesthesia machine

(c) Olympus Endoscope.

Its further deponed that the said stolen items were in the petitioner's clinic in Bomet County.

The investigating officer further depones that on the 21st day of September, 2016 together with PC Bakari and two other officers from Bomet police station went to the petitioner's clinic and recovered the above mentioned items and headed back to Mugutha Police station and kept them there where they were positively identified by the complainant as his.

Further that the investigations are still ongoing and they intend to charge one George Kinyua with theft related offences.

Further if the items are released to the petitioner then the criminal charge would be rendered nugatory.

Upon hearing both counsels and perusing the affidavits in support and in reply, it transpires that while in the course of their investigative duties, police confiscated equipment in question after a complaint was made to them. These items are in their custody pending charging one George Kinyua in a court of law in regard to theft related offences.

I have perused the statement of the complainant and the affidavit of PC Chirchir of Naivasha wherein they both state to have proceeded to the clinic of the petitioner and carted away the said equipment.

There is no indication as to whether an inventory was made and signed by the officers, the complainant and the petitioner.

The equipment which was carted away, was found in a clinic. There is no allusion to the effect that there were fears that it was to be taken away or sold hence there was need to follow the proper channels of an application for a search warrant before a court of law as required under S. 118 of the CPC.

The goods in question were carted away on the 21st day of September 2016. They are allegedly still in the custody of police. The petitioner has not been charged with an offence related with said goods nor has the said George Kinyua. These goods must be going to waste while at the police station.

It is ordered that the Respondents do release the goods in question within 14 days from today in the event that they will not have charged the suspect in a court of law. The breaches by the police are not constitutional in nature.

I am not satisfied that the Respondents have violated article 35 of the constitution as to the right to information as the applicant is aware of the whereabouts of the confiscated equipment.

There has been no violation of article 40 on the right to property as the Respondents have not confiscated the equipment permanently as ownership would have to be proved in court.

This petition partially succeeds.

Each party to bear its costs.

There will be a mention to confirm compliance with the court orders on 25/1/2017.

Ruling delivered dated and signed in open court this 7th day of December 2016 in the presence of learned counsel for the petitioner Mrs. Kirui holding brief for Mutai learned counsel for the Respondent Ms Chepkirui absent

Court assistant Mercy/Martin

M. MUYA

JUDGE

7/12/2016

13/12/2016

Coram

Before – Hon. Martin Muya – Judge

Mercy – CA

Court

Application certified urgent. Same to be served on the Respondents.

Mention on 16/12/2016

M. MUYA

JUDGE

13/12/2016

16/12/2016

Coram

Before – Hon. Martin Muya – J

Rotich – CA

Mr. Mugambi for the intended interested party

Mrs Kirui holding brief Mutai for the petitioner.

Matter is coming up for directions on an application

I had not perused the file before.

I wish to withdraw the application with no order as to costs.

Court – application withdrawn with no order as to costs.

M. MUYA

JUDGE

16/12/2016