



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO.226 OF 2015**

**CITY STAR SHUTTLE LTD.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

By Notice of Motion dated 24<sup>th</sup> June, 2015 the applicant prays for the release of its motor vehicles registration Number KBT 708 H, KBX 130 K and KBS 897 T which were impounded by the 1<sup>st</sup> respondent.

According to the applicant, the drivers of the said motor vehicles were ordered to drive the vehicles to the Nairobi County parking bay in Dagoretti by the County askaris. In a Replying Affidavit sworn by Reginah Irimu, Assistant Director in the Department of city Inspectorate in Nairobi County on 14<sup>th</sup> July, 2015, the vehicles were towed to the parking bay after their drivers abandoned them at a non designated bus stage thus causing obstruction to other road users. It is deponed that the vehicles were parked near Pan Afric Hotel along Valley Road on the 15<sup>th</sup> June, 2015. It is deponed that the 1<sup>st</sup> respondent is only holding motor vehicles registration Nos. KBT 708 H and KBX 130 X and that motor vehicle KBS 897 T was released to the applicant upon payment of impounding fees. They have asked the applicant to pay the impounding fees upon which the vehicles would be released to it.

After considering the various submissions made by the respective parties, I note that there is no evidence that the applicant's motor vehicles were towed to Dagoretti. The mere presence of a chain on the ground as exhibited on annexure 'RI 1' to the Replying Affidavit cannot suffice as evidence of towing. Annexure RI 1 are also not sufficient in demonstrating that the vehicles were parked in non-designated bus stage prior to their impounding. Even assuming that the vehicles were causing obstruction, as conceded by the 1<sup>st</sup> respondent's counsel, the Nairobi County Government has By-Laws governing traffic movements within the city. The proper thing that ought to have been was to arrest the drivers and have them charged with obstruction. If the drivers opted to flee, the motor vehicles' owners ought to have been sought and charged accordingly.

On the issue of impounding fees, as conceded by counsel for the 1<sup>st</sup> respondent the rule of the law ought to be adhered to in charging them. As at the time this application was heard, there was no evidence shown that the applicant had been served with an invoice demanding payment of particular fees and it failed to do so. Hence, the assertion by the 1<sup>st</sup> respondent that the applicant has adamantly failed to pay the said impounding fees is based on no evidence.

But again, as I have noted, there is no evidence that the applicant's motor vehicles were towed to Dagoretti hence any impounding fees demanded is based on an illegality.

It is my view that the County of Nairobi askaris exceeded their mandate in impounding the vehicles. They ought to have followed the right procedure of dealing with traffic offenders. I accordingly find that the application is merited. I order that motor vehicles KBT 708 H and KBX 130 K be unconditionally released to the applicant. As for motor vehicle registration KBS 897 T there is evidence that the same was released to the applicant on 15<sup>th</sup> June, 2015 upon payment of some fees to the County Government. The receipt issued thereof shows the vehicle was collected on the same date by the applicant. I thus make

no orders regarding this vehicle.

**DATED and DELIVERED this 20<sup>th</sup> JULY, 2015.**

**G. W. NGENYE – MACHARIA**

**JUDGE**

**In the presence of:-**

1. Mr. Mburu for the applicant.
2. M/S Aluda for the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> respondent.