

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC.CRIMINAL APPLICATION NO. 388 OF 2015

MARTIN NJOGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Notice of Motion dated 29th October, 2015, the Applicant prays that an order issues directing the Director of Criminal Investigations Officer (DCIO) Kilimani Police Station to unconditionally release to him motor vehicle Reg. No. KCD 045Y.

His case is that he runs a car hire business. The vehicle is registered in his joint names with Housing Finance Bank. He hired the same to a third party David Nganga Kabui on 6th October, 2015 for seven days. The said David Nganga Kabui sold it to a third party one Collins Algae Andre. It was impounded along Ngong Road in a garage while it was being fitted with an alarm system and window tints. The vehicle was thereafter towed to Kilimani Police Station where it has been lying since 14th October, 2015. According to the Applicant, the DCIO declined to release the same without a court order.

Learned counsel Ms. Wario opposed the application indicating that the same was subject of criminal investigations. She submitted that Collins Algae Andre bought the vehicle after it was posted for sale in a newspaper advertisement. The telephone number of the person advertising the sale one Martin Njogu delivered the car to him. Apparently, the Martin Njogu who sold the car turned out not to be the real owner also bearing the name Martin Njogu and is the Appellant herein. It was her further submission that the Applicant has been uncooperative with the police in the ongoing investigations. He recorded a statement with the police in which he indicated he knew one Ken who introduced to him another person by the name Benson Karanja Kiarie who in turn introduced to him David Nganga Kabui who hired the vehicle for the second time. Benson Karanja Kiarie was the first person to hire the vehicle. After returning the same, he hired it a second time and told the Applicant that he would send a person by the name David to collect it. The car was hired for 7 days and Kshs. 20,000/= paid for that period. Therefore, the Applicant was enjoined to direct the police to the whereabouts of Ken and David who would be helpful with investigations. Although Ms. Wario did not disclose the nature of investigations being carried out, it is clear that the police would wish to establish whether Ken and David colluded in stealing the vehicle from the real owner and selling it to an unsuspecting 3rd party.

After considering the respective submissions, there is no doubt that the motor vehicle in question is owned by the Applicant as attested in a copy of log book annexed to the Supporting Affidavit. A car hire agreement hiring the vehicle to David Ng'ang'a Kabui dated 6th October, 2015 is also annexed to the Supporting Affidavit. I have also had the opportunity of reading the statement of the Applicant recorded with the police. He confirmed he met one Benson Kiarie who wanted to hire the car for 4 days. He returned the vehicle on 5th October, 2015 and informed the Applicant that he would hire it a second time as he intended to use it for another 7 days. On 6th October 2015 at about 6.00 p.m, he called the Applicant informing him that he would send someone to collect the vehicle. He named the person as

David Ng'ang'a Kabui. The vehicle was to be returned on 13th October, 2015. Unfortunately the car was not returned as agreed and when the Applicant tried calling David N'ang'a on mobile phone, it had been switched off. He also tried calling Benson Kiarie but his mobile phone was also switched off. Interestingly, even Ken who had introduced to him Benson had switched off his phone. That is when he contacted the car tracking personnel and the vehicle was tracked somewhere in Lavington. It was finally found at Prestige World Motors along Ngong Road. It was being fitted with tint windows and an alarm system. It was in the hands of an old gentleman. The Applicant then informed the police after which the vehicle was impounded.

There is therefore no doubt that the persons who hired the vehicle from the Applicant were persons with bad motive. As at now, it is difficult to establish that the Applicant had a hand in the disappearance of his vehicle. He recorded the telephone numbers of Benson Karanja Kiarie in the car hire agreement between himself and Benson Karanja Kiarie. That also was the case in the car hire agreement between himself and David Nganga Kabui. It is thus difficult to fathom that the police can properly conclude that the Applicant is not cooperating with them. What they require to tell the court is what steps they have taken towards tracking the two motor vehicle hirers. At the same time, the Applicant is enjoined to inform this court to what extent he knew the person by the name Ken who introduced to him Benson Kiarie who first hired the vehicle. That way the police will probably get a lead on whether the Applicant acted in cohort with Benson and David towards the disappearance of the car. That information was not properly articulated in this application. For that reason, I am not in a position to either grant the application or dismiss the same. The Applicant is hereby ordered to further record a statement with the Investigating Officer detailing who Ken was to him and under what circumstances he introduced Benson Kiarie to him. In turn, the Investigating Officer, one Corporal Peter Kosgei will also file a Further Affidavit pursuant to the further statement of the Applicant detailing the nature of criminal investigations he is conducting and what action he intends to take within the next two weeks. I give these orders having in mind that, first, the police must be accorded sufficient opportunity to conduct their investigations and second, that the vehicle cannot be indefinitely detained by the police when they have not found the Applicant culpable for its theft. The matter will be mentioned on 17th December for the above purposes. It is so ordered.

DATED and DELIVERED this 4th day of December, 2015.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Mr. Kinyanjui for the Applicant*
2. *M/s Wario Respondent.*