



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 180 of 2013

PAUL GITAU NGURE.....PETITIONER

AND

THE ATTORNEY GENERAL.....1ST RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE.....2ND RESPONDENT

HENRY KIAMBATI (D.C.I.C.O) BURUBURU POLICE STATION.....3RD RESPONDENT

SILVANUS CHALTON OCHOLA.....4TH RESPONDENT

JUDGMENT

1. The petitioner in the petition dated 26th March 2013 is aggrieved by the fact that his motor vehicle registration No. KBP 824U is being detained without just and lawful cause at the Buruburu Police station resulting in the violation of his fundamental rights and freedoms. He has deponed that he is the owner of the vehicle having purchased it and the same is now security for a loan taken out by his wife from a local bank.

2. In the petition, the petitioner seeks the following reliefs;

- a) *A declaration that the 3rd respondent and indeed the police violated the fundamental rights of the Petitioner by no concluding the investigations within a reasonable time or giving valid reasons for not doing so.*
- b) *A declaration that the continued keeping of the petitioner's motor vehicle registration number KBP 824U Toyota Corolla NZE by the 3rd respondent in the police station or wheresoever since 15.02.2012 to date is illegal and in breach of fundamental rights of the petitioner and the said motor vehicle should be released to the petitioner forthwith.*
- c) *That compensation for violation of the fundamental rights of the petitioner and financial losses incurred while the vehicle is held at the police station.*
- d) *Costs of the petition.*
- e) *Any other relief that this Honourable Court deems fit and proper so to grant.*

3. When the matter came up for directions today, 4th April 2013, the Buruburu Division Criminal Investigations Officer (DCIO) gave evidence that the subject motor vehicle is being detained following a

complaint lodged by Peter Gitau Ngunjiri, the petitioner as having been stolen. The vehicle was recovered in the possession of the 4th respondent, Silvanus Chalton Ochola. He confirmed that the matter is under investigation by the Nairobi Provincial Criminal Investigations Officer (PCIO).

4. Silvanus Chalton Ocholla, the 4th respondent, through his advocate on record, informs the court that the subject vehicle belongs to him as he purchased it from a person bearing the name of the petitioner.

5. On the basis of the evidence and material before me, I am satisfied that there is a reasonable basis to detain the motor vehicle in order to facilitate investigation into the theft complaint by the petitioner. In the circumstances, the holding of the vehicle does not constitute a violation of the petitioner's fundamental rights and freedoms.

6. I am also of the view that the conflicting claims regarding ownership of the vehicle between the petitioner and the 4th respondent may be resolved through the criminal process if the malefactor is apprehended or through a civil case at the appropriate stage. I cannot therefore order release of the motor vehicle.

7. The petitioner's advocate has raised the issue of unreasonable delay in investigating the matter. From the narration stated by the DCIO, the matter may take some time and it is not for this court to supervise the minutiae of police investigations. I am sure that the Police are aware of its responsibilities under **Article 47**, that is to ensure expeditious, reasonable and efficient administrative action. I decline at this stage to impose a time scale or conditions to the investigation save to state that it must be carried out expeditiously.

8. In view of what I have stated the petition be and is hereby dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 4th day of April 2013

D. S. MAJANJA

JUDGE

Mr Magani instructed by Dola, Magani and Company Advocates for the petitioner.

Mr Mohamed, Litigation Counsel, instructed by the State Law Office for the 1st respondent.

Mr Njogu, Prosecution Counsel, instructed by the Directorate of Public Prosecutions for the 2nd and 3rd respondents.

Mr Ogunde, instructed by Walker Kontos Advocates for the 4th respondent.