



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 142A of 2013

JUMA OUMA OMONDI PETITIONER
AND

THE COMMISSIONER OF POLICE1ST RESPONDENT

SINGH SANTOSH KUMAR 2ND RESPONDENT

AND

KIARIE KIMANI INTERESTED PARTY

JUDGMENT

1. The petitioner in this matter states that he purchased a motor vehicle registration No. KAM 196L (“the vehicle”) at a public auction on 24th April 2009 from Auckland Agencies. He paid 40,000/00 as the highest bidder. As he waited for the registration of vehicle documents to be perfected, it was impounded by the police.

2. The reason given to him by the police for impounding the vehicle was that it was allegedly stolen by Kiarie Kimani, the interested party, who is now facing criminal charges in ***Makadara Criminal Case No. 88 of 2012***. The Charge Sheet in the criminal case states, “[Kiarie Kimani] on the 24th April 2009 at Wide Auto Services, along Falcon Road, off Enterprise Road, stole a motor vehicle registration number KAM 196L, make Hyundai, White in colour valued at Ksh.600,000/= the property of Singh Santosh Kumar.”

3. The petitioner contends that he made inquiries from Kiarie Kimani who informed him that the vehicle had been properly sold under the ***Disposal of Uncollected Goods Act (Chapter 58 of the Laws of Kenya)***.

4. Mr Achach, counsel for the petitioner, submitted that the impounding the vehicle by the police violated the petitioner’s right to acquire and own property protected by **Article 40** of the Constitution. The petitioner seeks the following declarations in the petition dated 4th April 2012.

(1) *A declaration that the petitioner’s right to acquire and own property to wit motor vehicle registration number KAM 196L has been violated.*

(2) *A declaration that motor vehicle registration number KAM 196L was procedurally and legally sold by the interested party and properly so acquired by the Petitioner.*

(3) *A declaration that motor vehicle registration number KAM 196L belongs to the petitioner.*

(4) *An order directed at the Commissioner of Police, through the OCS Makadara Divisional and CID Headquarters, Industrial Area Police Station or such other office to release motor vehicle Registration Number KAM 196L to the petitioner within 14 days or such reasonable time.*

(5) *In alternative to prayer 4 above, the respondents be ordered to party to the petitioner compensation equivalent to the market value of motor vehicle registration number KAM 196L at the time the Police seized the same from the petitioner on 23rd March 2011.*

(6) *Costs of the petition*

(7) *Such other or further order this Honorable Court may deem just to grant.*

5. The case for the State is set out in the replying affidavit of Charles Mainya, a Police Officer and the investing officer, sworn on 2nd May 2013. He depones that he investigated a complaint by Singh Santosh Kumar, the 2nd respondent, regarding the vehicle. It was alleged that the vehicle was stolen while undergoing repairs from a garage co-shared by Kiarie Kimani and a third party. Upon conclusion of the inquiries he concluded that the vehicle had been stolen by Kiarie Kimani. It is the respondent's case that on the whole there was reasonable evidence to prefer criminal charges against the interested party. Ms Kahoro, counsel for the 1st respondent, submitted that the vehicle is now the subject of the criminal case and it would be improper for the court to order its release as it would jeopardise the State's case and it would not be in public interest to do so.

6. I now take the following view of the matter. The right to acquire and own property guaranteed under **Article 40** is not absolute and may be limited by law for the purpose of investigating and prosecuting criminal offences. As there is a pending criminal case, I must exercise circumspection in commenting on the facts but I find that the 1st respondent properly carried out its mandate to detect crime and the interested party and that as a matter of fact there was reasonable evidence for taking the course it took. The 1st respondent decision to charge the interested party and impound the vehicle cannot therefore be faulted and as such no constitutional infraction has been established to warrant granting of prayer 1 and 5 of the petition.

7. Prayers 2 and 3 of the petition deal with the ownership of the vehicle. As this is matter of enforcement of fundamental rights and freedoms, the court cannot engage in an exercise of determining the owner of the vehicle in the absence of a constitutional violation by the parties. As I have held there is no breach by the 1st respondent, it follows that prayers 2 and 3 cannot be granted. The petitioner, if he is so minded, can sue the auctioneer for selling him goods to which he had no title. The petitioner can also assert his right to the vehicle as against Kiarie and Santosh. Furthermore, as the vehicle is now the subject of a criminal case and I would not order its release, as prayed in prayer 4 of the petition, as this would prejudice the State's case.

8. On the whole and for the reasons I have set out above, the petition fails and it is dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 3rd day of May 2013.

D.S. MAJANJA
JUDGE

Mr Achach instructed by Achach and Company Advocates for the petitioner.

Ms Kahoro, Litigation Counsel, instructed by the Directorate of Public Prosecutions for the 1st respondent.