



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT NAKURU**

MISCELLANEOUS CRIMINAL APPLICATION 173 OF 2012

**JOHN HARI GAKINYA T/A HARI GAKINYA & CO. ADV. .... APPLICANT**

**VERSUS**

**CHIEF MAGISTRATE NAIVASHA LAW COURTS ..... RESPONDENT**

**RULING**

The notice of motion dated **19/06/2012** is made under provisions of **Section 165(6) and (7)** of the **Constitution** praying that his court exercises its supervisory jurisdiction over the respondent by giving orders that the records relating to **NAIVASHA TRAFFIC CASE NO.4220 and 4221 of 2011** be brought to this court for purposes of ordering refund of cash bail to the applicant in the sum of Kshs.50,000/=.

It is premised on grounds that the applicant was acting as legal counsel for the accuseds in the aforementioned matters in which the accuseds were acquitted. Applicant was absent on the day they were acquitted. The applicant counsel had paid Kshs.50,000/= on behalf of the accused persons as cash bail to secure their release and the cash bail receipt was issued in the applicant's name.

Thereafter the cash bail receipt was re-submitted to the registry but it got lost or misplaced. Meanwhile the files relating to the matter could also not be traced. Since October 2011 the Respondent has not produced the lost files nor refunded the cash bail.

The accused persons in the Traffic matters were **CHARLES MACHARIA MWANGI** and **JOHANA WATENE** in **Traffic Case No.4220 of 2011** and **4221 of 2011** respectively.

The application was served but it elicited no response. This really is a simple administrative matter which the magistrate in charge of Naivasha ought to deal with expeditiously. For purposes of clarity the advocate for applicants ought to give the magistrate in charge of Naivasha court, better particulars i.e. the date of the accused's acquittal – I am sure that would assist with tracing the files movement. Once he does this then I direct that the two files be forwarded to Nakuru High Court for perusal and further directions within 21 days from today.

**Delivered and dated this 11th day of September, 2012 at Nakuru.**

**H.A. OMONDI**  
**JUDGE**