



**Ogenche v Directorate of Criminal Investigations & another (Miscellaneous Criminal Application E246 of 2023) [2024] KEHC 3521 (KLR) (Crim) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E246 OF 2023  
LN MUTENDE, J  
MARCH 19, 2024**

**BETWEEN**

**EDGAR MOGAKA OGENCHE ..... APPLICANT**

**AND**

**DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Edgar Mogaka Ogenche, the Applicant, filed an application dated 5<sup>th</sup> July, 2023 through the firm of Wanjiku Chepkwony Associates LLP Advocates seeking release of Motor Vehicle Registration Number KDC 606Z (subject motor vehicle) to the applicant .
2. The applicant further prays that the court directs the respondents, its agents, servant or any officers to take photographs of the subject motor vehicle, subject to the proceedings herein pending such release and investigations if any; and, that the court makes orders it may deem necessary for the ends of justice.
3. The application is premised on grounds that; The applicant is the bonafide owner of the subject vehicle having purchased it from Kobe Motors company Ltd through Silverline motors Ltd and taken possession on 23<sup>rd</sup> June, 2021; The vehicle was impounded on 16<sup>th</sup> February, 2022 by police officers at a time when it was being driven by his father and has been detained since then. That the respondents have not brought any charges, the vehicle is wasting away and there is no justification for its continued detention.
4. The application is supported by an affidavit deposed by the applicant who depones that Silver Line Motors Ltd which purchased the vehicle on his behalf is working on the transfer. That the Director of Criminal Investigations Office through Interpol Police intercepted the vehicle while being driven



- by his elderly parent within Parklands area and further detained the vehicle. That he has made several visits to Parklands Police Station to establish what crime may have been committed and to date he has not been informed of any.
5. That during his recent visit he found the vehicle in a deplorable state, vandalized with grass growing inside.
  6. That his advocate filed a complaint with the Competition Authority of Kenya but was advised that it did not have jurisdiction over the matter since the vehicle was subject to civil proceedings between Silverline Ltd and Kobe Motors Ltd. He contends that he is not party to the proceedings. Further that there is no court order requiring the vehicle to be detained by the 1<sup>st</sup> respondent.
  7. In response thereto, learned Prosecution Counsel Mr. Mutuma stated orally that ownership of the vehicle was in dispute and undertook to ensure filing of a replying affidavit by the Investigating Officer. Afterwards Ms. Odour, learned Prosecution Counsel notified the court that the Investigating officer was unwilling to file a reply, therefore, the application is not opposed.
  8. Subsequently, the applicant filed an application dated 14<sup>th</sup> November, 2023 seeking compensation for the loss and damage caused to the vehicle during the period it had been detained damaged and vandalized.
  9. That the court issues an order for compensation by IP Samuel Muriithi, SGT Kirimi, PC Musyoka, PC Paul and OIC Parklands Police Station for costs incurred by the applicant for purchasing the items vandalized; and, in the alternative the court issues an order for compensation at a cost determined by the court as a fair value of costs of purchasing the items.
  10. Parties named have not taken directions on the same considering that the cited individuals are not named as respondents hence not parties in the instant application.
  11. I have duly considered the application, affidavit evidence, and, annexures thereto. The application is brought under the provisions of Article 23 (1), Article 40 (1) (a), (b) and (3) Article 47 (1) and Article 50 (1) (a) of the *Constitution*. These refer to the applicant's right to move the High court and the High court's power to determine whether a Constitutional right has been violated or is threatened to be violated
  12. The gist of the applicant case is that his motor vehicle was intercepted and detained by police officers and has not been released to date and he has been left in the dark as no reasons have been given for its detention.
  13. The police have the power to detain any property used or suspected to be involved in the crime. Section 26 (1) (c) of the *Criminal Procedure Code* provides that;
    1. A police officer, or other person authorized in writing in that behalf by the Commissioner of Police, may stop, search and detain—  
any aircraft, vessel or vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found; or any aircraft, vessel or vehicle which there is reason to suspect has been used or employed in the commission or to facilitate the commission of an offence under the provisions of Chapters XXVI, XXVIII and XXIX of the *Penal Code* (Cap. 63); or any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained.
  14. The seizure is further to the provisions of Section 24(e) and (g) of the *National Police Service Act* (Cap 84) where the police mandate is to *inter alia* conduct investigations and collect intelligence.



15. The detention under the above section and indeed under any provision of the law including Section 121 of the *CPC* where the court is enjoined to facilitate seizure and detention is not meant to be for an indefinite period but only for purpose of investigations.
16. The alluded to provision of the law provides thus:

121(1). When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.
17. Additionally, the actions of the police in its mandate must be compliant with the law. In the case of *Brown Field Developers Limited vs Banking Fraud Investigations Unit & 4 others* [2016] eKLR Onguto J held that

“While Section 24(e) and (g) of the *National Police Service Act* (Cap 84) grants to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents the power to investigate, detect and prevent crime, the Respondents are only to conduct such mandate or exercise such powers within the confines of the law generally and of the Constitution in particular.”
18. Article 40(6) of the *Constitution* of Kenya, 2010 provides for the right to own property as a fundamental right, the property owner must enjoy user and exclusive possession of his property. Article 40(6) limits that right where the property has been found to have been unlawfully acquired.
19. The documents annexed to the application and further documents on record are clear that the applicant purchased the vehicle for value and consideration and property and possession had passed to the applicant at time of the application.
20. Despite the averment that the vendor of the vehicle is involved in a legal tussle with Kobe Motors limited in respect of the vehicle; the burden was on the Investigating Officer to give reasons for further detention and further limitation of the applicant’s right to property.
21. The letter by the DPP to the IG directing the investigations to be closed and advising that there is no evidence of fraudulent or unlawful acquisition speaks otherwise. Hence there is no ground for continued detention under Section 26 (1) of the *Criminal Procedure Code* or any other provision of the law. Further, detention is punitive, in breach of the law and a gross violation of the applicant’s right to his property.
22. The upshot of the above is that the application is meritorious. It is hence ordered that Motor Vehicle Registration No. KDC 606Z Toyota Voxy be released to the applicant forthwith.
23. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 19<sup>TH</sup> DAY OF MARCH, 2024.**

**L. N. MUTENDE**

**JUDGE**

In the Presence Of:

Chepkurui for Appellant

Mr. Mongare for Respondents

Court Assistants – Asin & Gladys

