



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII**

Criminal Misc. Appli. 163 of 2006

REPUBLIC APPLICANT

VERSUS

OCPD NYAMIRA POLICE STATION)

ARASTOS OBUTU KOMBO) RESPONDENT

RULING

By an application dated 30th April, 2007 and amended on 30th May, 2008, the applicant prayed for a mandatory order to compel the OCPD Nyamira, Tarzan Okungu, and the DCIO Nyamira, Silas Sato, to avail motor vehicles registration numbers KAB 889Y and KAB 509M to the court and thereafter the same be released to him. In his affidavit in support of the application, the applicant deposed that in Miscellaneous Petition No.152 of 2006 against the Republic, the Court issued an order directing the aforesaid two police officers to release motor vehicle registration number KAB 889Y to him.

The said officers were duly served with the said court order. At the time of service of the court order, the applicant saw the motor vehicle at the compound of the police station. However, the police refused and/or failed to honour the aforesaid court order.

On 12th July, 2007 Chief Inspector Silas Sato, the DCIO Nyamira Division, swore an affidavit and stated that the subject motor vehicle was seized on 3rd May 2006 by his officers on suspicion that the chassis was foreign and had been interfered with. The motor vehicle had been lying in the police yard pending investigations until 13th July, 2006 when a seizure order was issued by the Kenya Revenue Authority, Customs and Excise Department; he stated. He added that on 14th March, 2007 the police handed over the said motor vehicle to the Kenya Revenue Authority (hereinafter referred to as "K.R.A.") as per the aforesaid seizure order. Since that time the motor vehicle was not in the custody of the police, he deposed.

Mr. Steven Sumbeiywo, a Revenue Officer based at Kisumu also filed an affidavit and stated that with regard to motor vehicle registration number KAB 889Y, the D.C.I.O Nyamira called K.R.A Offices at Kisumu and informed them that the police had impounded a motor vehicle which was suspected to have been stolen. Mr. Sumbeiywo went to Nyamira to verify the chassis and engine numbers and the logbook. He discovered that there was an anomaly in the chassis plate. It appeared that the chassis plate had been sowed off and welded onto an older plate. The K.R.A. Officer then issued a Notice of Goods deposited in Customs warehouse (F.89) dated 13th July 2006. He added that the applicant had not visited the K.R.A. offices with the original logbook and other supporting documents to explain the above anomaly. He also confirmed that the motor vehicle was towed to Customs Warehouse, Kisumu. A similar explanation was also given with respect to motor vehicle registration number KAB 509M.

Mr. Sumbeiywo further stated that the motor vehicles could not be released until K.R.A. established ownership of the same and a satisfactory explanation given as to how the chassis plates were altered. He exonerated the police from any blame saying that it was the K.R.A that had seized the vehicles.

On 10th July, 2008 Mr. Kemo, Principal State Counsel and Mr. Mokua for the applicant appeared before this court and following considerable submissions regarding the application a consent order was recorded as hereunder:

“By consent –

- 1. That the applicant do avail the log books subject of motor vehicles registration number KAB 889Y, Toyota Hiace, and motor vehicle registration number KAB 509M, Toyota Hiace, before the Kenya Revenue Authority’s offices at Kisumu in the presence of both counsel and/or their representatives for verification of the chassis numbers.*
- 2. That a report by the K.R.A. witnessed by both parties be presented to court within 15 days.*
- 3. That the matter be mentioned on 28/7/2008.”*

On 28th July, 2008 Mr. Kemo and Mr. Mokua informed the court that they went to K.R.A. offices at Kisumu on 25th July 2008 and did the verification of the chassis numbers but K.R.A was yet to avail its report. The court adjourned the application to 15th September, 2008 and directed that the report be filed by the said date.

The application did not come up until 22nd October, 2008 when Mr. Kemo told the court that the report had not been filed but he had telephoned K.R.A offices at Kisumu. He was told that the report would be faxed to K.R.A offices at Kisii. By consent the application was fixed for mention on 24th October, 2008. Come that date and K.R.A had still not availed any report as ordered. The application was put off to 31st October, 2008 since counsel indicated that they were likely to record a settlement. On 31st October 2008 Mr. Kemo informed the court that they were not in a position to record any settlement. Mr. Mokua stated that since no report had been filed by the K.R.A, the vehicles should be ordered released to his client.

From what I have highlighted hereinabove, K.R.A has been in possession of the two motor vehicles since sometimes July, 2006. It is now more than two years since K.R.A seized the vehicles and it has failed to give any satisfactory reason as to why the vehicles cannot be released to the applicant. On 25th July, 2008 the original logbooks of the vehicles were availed to K.R.A. and to date it has not filed any report as agreed by consent. According to the applicant, after the police impounded his motor vehicles, allegedly for some traffic offences, he was ordered to avail all the documents regarding purchase of the vehicles and payment of duty and he did so. For over two years both the police and K.R.A have held the applicant’s motor vehicles unlawfully. I say so because no credible evidence has been produced before court to show that there was any valid reason that could justify seizure of the motor vehicles. If there was any reason for preferring charges against the applicant, that ought to have been done long time ago. Mr. Kemo, Principal State Counsel and Mr. Mokua, advocate for the applicant, were at K.R.A. offices on 25th July, 2008. Mr. Mokua presented the original logbooks and the vehicles were duly inspected in presence of both counsel. Why has K.R.A. refused and/or failed to file any report as ordered?

I am dismayed by the conduct of K.R.A. Office, Kisumu. I order the officer in charge of that office to release to the applicant the two motor vehicles forthwith failing which he will personally be in contempt of court and will be liable to be prosecuted for such contempt. The Attorney General shall bear the costs of this application.

DATED, SIGNED and DELIVERED at KISII this 19th day of November, 2008.

D. K. MUSINGA.

JUDGE.

Delivered in the open court in the presence of:

1. Mr. Mokua, for the applicant.
2. Mr. Kemo, Principal State Counsel for the Respondent

D. K. MUSINGA.

JUDGE.