

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO 179 OF 2014

BETWEEN

JULIAN DANI KIMARO.....PLAINTIFF

AND

ATTORNEY GENERAL.....DEFENDANT

JUDGMENT

Date of Last Order: 25/09/2019

Date of Judgment: 17/10/2019

MLYAMBINA, J.

The brief facts constituting this civil claim as can be gathered in the plaint is that; way back on 19th August, 2002 the Plaintiff's car with registration number MG 6152 Landover 109 was seized linked with the incident of murder. The said charges which were against SAID OMARI MHANDO and JUMA RAMADHANI MOHAMED ended up with an acquittal coupled with an order for return back of the seized car to the Plaintiff herein. That, since that judgment the Plaintiff has made endless efforts to obtain return back of his car without success. Wherefore, the Plaintiff prayed for judgment and decree against the Defendant as follows:

- a) An order for the Defendant pays the Plaintiff TZS 30 Million being the total costs for the seized car.

- b) An order for payment of TZS 162 million as compensation for income that would have been generated by the Plaintiff.
- c) An order for payment by the Defendant to the Plaintiff total of TZS 1, 152,000/= as general damages occasioned.
- d) The Defendant pay the Plaintiff interest on the decretal amount at 15% rate from the date of judgment till when payment is made in full.
- e) The Defendant pay the Plaintiff costs of and incidental to the suit.
- f) Any other relief (s) that the hon. Court may deem fit.

The Plaintiff's allegation was denied by the Defendant in its Written Statement of Defence (WSD). During final trial conference, the Court framed the following issues for determination:

1. Whether the Plaintiff's motor vehicle Reg. No. MG 6152 Land rover 109 was seized by the police in connection with murder charges.
2. Whether at the end of criminal charges involving the said motor vehicle the Court ordered return of the same to the Plaintiff.
3. Whether the said motor vehicle was returned to the Plaintiff as per the order of the Court.
4. To what relief (s) are the parties entitled to.

The prosecution side paraded two witnesses; Julian Dan Kimaro (PW1) and said Omari Mhando (PW2). The defence side brought one witness to defend the allegation namely F 6821 Corporal Martin David Mollel.

As regards the first issue; *whether the Plaintiff's Motor Vehicle Reg. No. 6152, Land rover 109 was seized by the police in connection to murder charges.* PW1, stated before this honorable Court that he is the owner of Motor Vehicle No. MG 6152, make Land rover 109. The said motor vehicle was seized by police on 19/08/2002 for murder charge. PW1, went on to state that, by the time the motor vehicle was seized he had two employee one Omary Mhando and Juma Ramadhani. The said motor vehicle was seized at Gairo Police Station, the employees were charged with murder and acquitted in Criminal Session Case No. 16/2014, at the High Court of Arusha. Following the acquittal of the two accused persons, PW1 wrote a letter to the police station requiring them to return back the said motor vehicle but no reply.

PW1 wrote a 90 days' notice to the Defendant in vain. The letter dated 23rd May, 2016 was not admitted for the reason that it was not original and it was not part of the pleadings as per **Section 67 and 68 of the Law of Evidence Act Cap 6 (R.E 2002)**. The notice of 90 days was admitted as exhibit P2.

The copy of judgement for Criminal Session Case No. 16/2014 was admitted as Judicial Notice 1. PW2 backed the evidence of PW1 by stating that he was the driver of the said motor vehicle make Land rover 109 with Registration No. 6152 pickup the property of PW1. PW2 stated further that, they were arrested by Police Officer together with his conductor Juma Ramadhani. The police suspected that the said motor vehicle was involved on murder at Leiseri Area Kiteto. They were arrested at Gairo Police Station but left the said motor vehicle there. They were taken to Kiteto District Arusha where they were charged with murder. On 24/02/2009 they were acquitted for the reasons that there is no case to answer against them. Hon. Judge Chocha ordered that motor vehicle be returned. According to the evidence of PW2, the said motor vehicle is still at Gairo Police Station.

On the defense side, DW1 testified before this Honorable Court that he worked at Babati Police Station Manyara since 2002. DW1 stated that there was murder case of one Daudi Casian. He was murdered at junction of Leiseri and Chakwate at Kiteto. The case was reported to Kiteto Police Station and he went to the scene of crime and investigated the case and arrest two accused at Gairo and they were found with motor vehicle make Land rover no 109.

They took the said accused and left the said motor vehicle at Gairo Police Station.

Having going through the pleadings, exhibits, judicial notice and evidence of both parties before this Court, the Court is of the view that there is no sufficient evidence to prove that the said motor vehicle make Land rover 109 belongs to the Plaintiff. At the Trial, the Plaintiff (PW1) alleged that the original document is in the possession of the Defendant and he gave notice to the Defendant as required by law under Section 66 of the Law of Evidence. It is the duty of Plaintiff to prove that the said property belongs to him. Since the Plaintiff failed to prove that the original document is in the possession of Defendant then secondary evidence are not admissible basing on **Section 67 (5) of the Law of Evidence Act Cap 6 (R.E 2002)**.

Even if secondary evidence would be admissible in Court, the letter dated 23rd May, 2006 allegedly sent to Gairo Police Station do not form part of the pleadings.

I had time to go through judicial notice 1. I noted at page 3 of the Judgment, PW4 who was a passenger in a Land rover said he was seating immediately behind the deceased in an old fashion 109 Land rover box board. There is no other part of the Judgment

referring to motor vehicle Reg. MG 6152 Land rover 109 in the said judgment.

Even if there is a mention of the claimed motor vehicle, there is no direct link of ownership of the same to the Plaintiff. It is the findings of this Court that the Plaintiff has totally failed to either prove on balance of probabilities that the motor vehicle Reg. MG 6152 Land rover 109 was seized by police in connection with murder charges or the said same motor vehicle belongs to him.

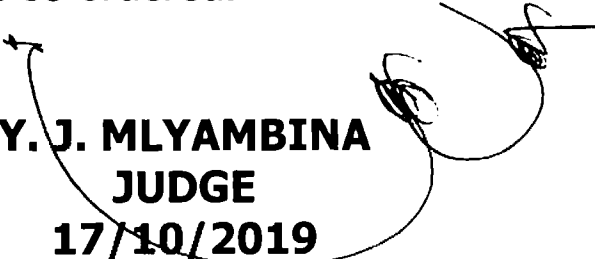
As regards the 2nd issue, page 17 of judicial notice 1 is very clear in that:

"I direct that the motor vehicle whose registration numbers were not disclosed, but which was seized during the arrest of the 1st accused who was discharged for want of a case to answer, and Tshs 77,300/= seized from the 2nd accused all purportedly intended to be exhibited and since none were exhibited until the conclusion of the case, the owners thereof are entitled to have their properties returned to them"


The above order of the Court answers the second issues to the effect that the undisclosed motor vehicle number was ordered to be returned to the owner. As observed earlier on, the Plaintiff has not established on whether the Motor Vehicle Reg. No. MG 6152

Landrover 109 belongs to him. It is the further findings of this Court that failure to prove ownership could not entitle the Plaintiff for the return of the same motor vehicle to him.

In the premises of the above finding, the only available relief (s) is to, as I hereby dismiss the suit for lack of merits. Let each party bare his own costs. It is so ordered.


Y. J. MLYAMBINA
JUDGE
17/10/2019

Judgment pronounced and dated this 17th day of October, 2019 in the presence of the Plaintiff in person and Learned State Attorney Mercy Kyamba for the Respondents. Right of Appeal explained.


Y. J. MLYAMBINA
JUDGE
17/10/2019