

1450 HRS



Our Ref: SALLP/2021/GEN/EKS

Your Ref: TBA



Date 28TH June 2021

THE DIRECTOR OF PUBLIC PROSECUTION,
ODPP HOUSE, RAGATI ROAD, UPPER HILL.
P.O. BOX 30701-00100,
NAIROBI.



Dear Sir,

RE: REQUEST FOR INVESTIGATIONS, ARREST AND PROSECUTION OF DR. EKURU AUKOT FOR OBTAINING MONEY BY FALSE PRETENSE CONTRARY TO SECTION 313 OF THE PENAL CODE

We refer to the above matter in respect of which Mr. Kamau Andrew Njoroge (hereinafter "our client") has retained us to respectfully address you as hereunder: -

On or about 4th November 2020, our client was summoned by the Directorate of Criminal Investigations Office at Kabete Police Station over theft allegations in respect of Motor Vehicle Registration Number KBL 502B (hereinafter "the vehicle"), which was in his possession and had purportedly been stolen from one Dr. Ekuru Aukot. In total obedience to the said summons, our client visited the DCIO offices, after which the vehicle was impounded in the guise of conducting further investigations.

To our client's utter shock and dismay, on or about 8th November 2020, he learnt through the Investigating Officer that the vehicle, which he had lawfully purchased from Dr. Ekuru Aukot for value, had been released to the said Dr. Ekuru Aukot, without any colour of right.

Consequently, our client made a report at Muthangari Police station on how Dr. Ekuru Aukot had obtained money from him in the pretext of selling the vehicle to him but had refused to transfer and/or facilitate the transfer and now had colluded with officers at Kabete Police Station to defraud him of both his money and the car, wherein he was issued with O.B. No. 26/08/11/2020.

Since then, our client has made innumerable visits to Muthangari Police Station following up on the matter, written a statement with the Police, provided all the required and necessary documentation and brought aboard witnesses, but despite all these, nothing has been done to date, 11 months later and counting.

We contend that the actions or conduct by Dr. Ekuru Aukot amount to a criminal offence under Section 313 of the Penal Code and that the Police's actions this far are wanting and conduct unbecoming, to say the least. As such, we write to request you to call for the file and take the necessary action to protect

Edwin K. Saluny - Managing Partner | Mohamed Billow - Partner

Hillside Apartments, Suite LG2 - Ragati Rd, Upper Hill • P.O. Box 30414 - 00100 Nairobi
Mobile: +254 741679810 • Email: info@salunyadvocates.co.ke

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our client's rights which are being trampled upon. It is noteworthy to state that justice delayed is justice denied.

We will appreciate your prompt intervention.

Yours faithfully,

SALUNY ADVOCATES LLP

EDWIN SALUNY

info@salunyadvocates.co.ke

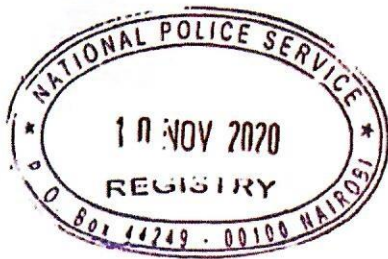
Cc

1. DIRECTOR,
INTERNAL AFFAIRS UNIT,
NATIONAL POLICE SERVICE,
KCB TOWERS UPPERHILL,
P.O.BOX 1880 -00200,
NAIROBI.
2. THE INDEPENDENT POLICING OVERSIGHT AUTHORITY
1ST NGONG AVENUE, ACK GARDES ANNEX
P.O.BOX 23035-00100
NAIROBI.

Edwin K. Saluny - Managing Partner | Mohamed Billow - Partner

Hillside Apartments, Suite LG2 - Ragati Rd, Upper Hill • P.O. Box 30414 - 00100 Nairobi
Mobile: +254 741679810 • Email: info@salunyadvocates.co.ke

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**SALUNY
ADVOCATES LLP**



Our Ref: SALLP/GEN/L/2020

Your Ref: TBA

**THE DCIO
KABETE POLICE STATION
NAIROBI.**

Date: 9th November 2020

Dear Sir,

RE: COMPLAINT AGAINST YOUR UNLAWFUL RELEASE OF MOTOR VEHICLE REGISTRATION NUMBER KBL 502B (SALOON BMW CAR) TO ONE DR. EKURU AUKOT IT BEING THE PROPERTY OF KAMAU ANDREW NJOROGÉ

The above matter refers.

We act for Kamau Andrew Njoroge (hereinafter "our client") on whose instructions we write to you as hereunder: -

On or about 4th November 2020, our client was summoned by your officers to appear before you over theft allegations in respect of Motor Vehicle Registration Number KBL 502B (hereinafter "the vehicle") which was in his possession and had purportedly been stolen from one Dr. Ekuru Aukot. In total obedience to the said summons, our client visited your offices whereupon you impounded the vehicle in the guise of conducting further investigations into the said allegations.

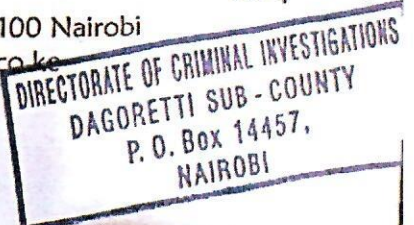
Remarkably, on or about 8th November 2020, our client was informed by the Investigating Officer that the vehicle, which he lawfully purchased from Dr. Ekuru Aukot for value, had been released by yourself to the said Dr. Ekuru Aukot. Your conduct in the circumstances thus became wanting, unprofessional and criminal, abusing the very core of public trust expected from your office.

This Complaint, therefore, seeks to bring to your attention that we shall, at an opportune time, be seeking disciplinary and punitive action to be meted against yourself for betraying the public trust, for abuse of office and unprofessional conduct.

Edwin K. Saluny - Managing Partner | Mohamed I. Billow - Partner

Hillside Apartments, Suite LG2, Ragati Road • P.O. Box 30414 - 00100 Nairobi
Mobile: +254 733 572 538 • Email: info@salunyadvocates.co.ke

Received
[Signature]
10/11



RULE OF LAW

As you may be no doubt aware, you are a public officer within the meaning of Article 232 of the Constitution. As such, you are bound by the Constitution, the Penal Code, the National Police Service Act, the Public Officers Ethics Act and all appurtenant laws and regulations. You have gravely transgressed against all these laws, with faithful impunity. Whereas the law requires you to at all material times remain impartial, you acted contrary to the law by choosing to be partial, thus breaching public trust in your office. The laws covering this issue are as follows: -

1. The Constitution of Kenya, 2010

- i. Article 10 – The national Values and Principles of governance in this Article bind all state organs, State officers, public officers and all persons. The national values include good governance, integrity, transparency and accountability.
- ii. Article 27 (i) – every person is equal before the law and has the right to equal protection and equal benefit of the law.
- iii. Article 47 – every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- iv. Article 260 – “public office” means an office in the National Government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the consolidated fund or directly out of money provided by the Parliament.
- v. Article 260 – “Public officer” means any state officer, or any person, other than a state officer, who holds a public office.

2. Interpretation and General Provisions Act, Cap 2 of the Laws of Kenya

- i. Section 3 – “Police Officer” means terms and expressions referring to ranks in the Police Force, bear the meaning respectively assigned to them by the Police Act.
- ii. Section 3 – “Public office” means an office or employment the holding or discharging of which by a person would constitute that person a public officer.

3. The Penal Code, Cap 63 of the Laws of Kenya.

- i. Section 101 (1) – Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a felony.

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- ii. Section 102A – a person convicted of an offence under Sections 99, 100, 101 or 102 of this Part shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding 10 years or to both.
4. The Independent Policing Oversight Authority Act No. 35 of 2011.
- i. Section 7 – The Authority shall have power to investigate the Service on its own motion or on receipt of complaints from members of the public, and for that purpose, to gather any information it considers necessary by such lawful means as it may deem appropriate.
5. The National Police Service Act, Cap 84 Laws of Kenya
- a. Section 8A – Inspector – General shall be responsible for all matters relating to the command and discipline of the Service subject to disciplinary control of the Commission. The Inspector – General shall exercise command over the National Police Service and lawfully administer, control and manage the National Police Service as a disciplined service.
 - b. Section 87 – There is established an Internal Affairs Unit whose functions shall include to receive and investigate complaints against the police. The unit shall investigate misconduct and hear complaints from members of the service or members of the public or at the request of IPOA.
 - c. Section 88 – A police officer who commits a criminal offence against the law shall be liable to criminal proceedings in a court of law.
 - d. The Eighth Schedule – it shall be an offence against discipline for any police officer to be negligent in the performance of his duty, without proper authority, disclose or conveys any information concerning any investigation or other police matter.
6. The Ethics and Anti – Corruption Commission Act No. 22 of 2011
- a. Section 11 – In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall receive complaints on the breach of the code of ethics by public officers, and investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti – Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution.
 - b. The Commission shall also recommend appropriate action to be taken against State Officers or public officers alleged to have engaged in unethical conduct, and oversee the enforcement of codes of ethics prescribed for public officers.
7. The Public Officers Ethics Act No. 4 of 2003

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- a. Section 9 – a public officer shall carry out his duties in a way that maintains public confidence in the integrity of his office and discharge any professional responsibilities in a professional manner.
- b. Section 12 (1) – a public officer shall use his best efforts to avoid being in a position in which his personal interests' conflict with his official duties.

PARTICULARS OF THE COMPLAINT

A. ABUSE OF OFFICE

- I. When the herein Complainant, Kamau Andrew Njoroge visited the Kabete Police Station, he made it known to you and your officers that he was the beneficial owner, entitled to registration, of the vehicle. He backed up his position by presenting documents to prove that he had indeed purchased the vehicle from Dr. Ekuru Aukot and/or his Principal Lorna Grace Wanjiru Gatheru.
- II. In your opinion, there was a dispute between one Dr. Ekuru Aukot or his Principal Lorna Grace Wanjiru Gatheru and our client over ownership of the vehicle and consequently you decided to impound the vehicle pending the resolution of the dispute. Strangely, you later decided to release the vehicle to Dr. Ekuru Aukot, against the law and without notifying our client.
- III. You, therefore, exercised powers which you never had thus acting ultra vires.
- IV. You allegedly instructed your junior officers not entertain our client should he care to lodge a claim for 'obtaining money by false pretenses' against Dr. Ekuru Aukot.
- V. It is safe to conclude that you abused your office by becoming partial and biased and by not according our client an opportunity to be heard before you made your drastic decision of releasing the vehicle to Dr. Ekuru Aukot or his Principal Lorna Grace Wanjiru Gatheru.

B. BREACH OF ADMINISTRATIVE ACTION

- I. You were required to administratively secure the custody of the vehicle until such a time when the dispute is presented to a Court of Law, and an order from the Court made as to its release and to whom.
- II. You took sides with one Complainant and without any justifiable cause, and for reasons known to yourself, chose to release the suit vehicle to Dr. Ekuru Aukot or his Principal Lorna Grace Wanjiru Gatheru.
- III. You were and is required to ensure fairness in all actions you undertake as a public officer and enforcer of the law. You made a deliberate decision to deny our client the right to a fair administrative action.

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C. CONFLICT OF INTEREST.

- I. You should know that our client is the Executive Director of Thirdway Alliance Party and Dr. Ekuru Aukot is the former Party Leader. Prima facie, there would be no way such close persons would steal a vehicle from one another.
- II. You allowed yourself to be conflicted and/or used by one party to settle political scores.
- III. You accepted to be compromised by one party so that you may release the suit vehicle without any lawful justification.

REASONS WHEREFORE OUR CLIENT DEMANDS: -

- a. THAT in the interim, you recuse yourself absolutely from commenting, directing, discussing and/or dealing in any manner whatsoever with regards to this matter.
- b. THAT you forthwith order for the return of the vehicle to Kabete Police Station, in no more than two days of receipt of this letter.
- c. THAT you be and is hereby warned, should the security of our client be threatened, you shall take full responsibility of the same.

Yours faithfully,

SALUNY ADVOCATES LLP

For

EDWIN SALUNY

saluny@salunyadvocates.co.ke

Cc:

1. Inspector General of Police
Jogoo House 'A'
Taifa Road
P.O. BOX 44249 – 00100
NAIROBI
2. Directorate of Criminal Investigations
Mazingira Complex
Kiambu Road
P.O. Box 30036 – 00100
NAIROBI
3. CCIO, Nairobi County
NAIROBI

Edwin K. Saluny - Managing Partner | Mohamed I. Billow - Partner

Hillside Apartments, Suite LG2, Ragati Road • P.O. Box 30414 - 00100 Nairobi
Mobile: +254 733 572 538 • Email: info@salunyadvocates.co.ke

4. The Office of the Director of Public Prosecutions
ODPP House, Ragati Road, Upper Hill
P.O. Box 30701 – 00100
NAIROBI.

5. The Independent Policing Oversight Authority
1st Ngong Avenue, ACK Garden Annex
P.O. Box 23035 – 00100
NAIROBI.

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