



**THE SUPREME COURT OF KENYA  
ALEX OTUKE ONDIMU & ANOTHER V. COMMISSIONER OF POLICE & 3  
OTHERS**

**SC PETITION NO. E031 OF 2023  
DATE OF JUDGMENT: 9<sup>th</sup> August 2024**

**MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.*

***Orders: The Court allows the appeal in part.***

**Background**

The 1<sup>st</sup> Appellant was one of the directors of the 2<sup>nd</sup> Appellant that was involved in the business of buying and selling motor vehicles, which included purchasing motor vehicles from Yuasa International Limited. A payment dispute arose, prompting Yuasa to instruct auctioneers to repossess motor vehicles KBK 865S and KBH 491Z. Aggrieved by this act, the 1<sup>st</sup> Appellant filed ***Nakuru HCCC No. 249 of 2010***. Meanwhile, Speedbat Freighters Limited, a clearing and forwarding company, lodged a complaint against the Appellants with the Criminal Investigations Department (CID) in Mombasa. The 4<sup>th</sup> respondent led the investigations and on 23<sup>rd</sup> and 24<sup>th</sup> January 2011, in the company of fellow police officers, proceeded to Section 58 in Nakuru where they conducted a search and took away, amongst other items, several motor vehicles KBL 111S, KBN 181L and KBN 141T to the Nakuru Central Police Station.

Consequently, 1<sup>st</sup> Appellant was charged with intention to defraud, stealing by agent and obtaining property by false pretences under ***Mombasa. Cri. Case No. 188 of 2011*** which was filed on 18<sup>th</sup> January 2011. In 2012, the Appellants filed a suit in the High Court, ***HCCC No. 223 of 2012***, against the respondents. The subject of the suit was the searches conducted in the Appellants' premises, seizure of as well as the institution of ***C.M.CR.C. No. 188 of 2011***. They argued that the respondents' actions caused the Appellants' business to suffer losses, and eventually, close down in 2014. Additionally, that the 1<sup>st</sup> Appellant had been subjected to mental anguish, trauma, anxiety and suffered damage to his reputation. The High Court held that the manner of seizing the motor vehicles was a violation of the Appellants' constitutional rights and awarded them Kshs.3,000,000/= but found that the Appellants had not proven that the business losses were solely caused by the respondents. On appeal, the Court of Appeal upheld the High Court's decision.

The Supreme Court having listened to submissions of all parties has found the appeal is ***successful but only to the extent that the Court of Appeal erred in failing to consider all the grounds of appeal advanced by the Appellant. All other prayers in the appeal are dismissed.***