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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
MISCELLANEOUS CRIMINAL CAUSE No. 16 of 2019
(eCMS 4603 of 2019)

BETWEEN:

LAWRENCE MALEMIA KACHINGWE

APPLICANT

versus

THE STATE

RESPONDENT

ORDER

(Kamanga, J., 1st April 2020)

UPON reading the *inter partes* summons for an order for release of a motor vehicle from police custody, taken under section 147 of the Criminal Procedure and Evidence Code (the CP and EC) as well as perusing the sworn statement filed in support of the summons and the skeletal arguments, this court declines to allocate a date of hearing for this summons on the following grounds:

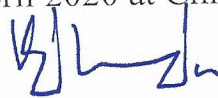
1. There is no justification as to why the applicant considers his claim under *Lawrence Malemia Kachingwe v The State*, Miscellaneous Criminal Cause no. 16 of 2019, wherein he is seeking the respondent to release his motor vehicle Toyota Hilux Registration Number MN6162 from Southern Region Police Headquarters on the grounds that set out in the sworn statement, to be a criminal matter in terms of section 6A(1)(c) of the Courts Act and worthy to be filed in the High Court of Malawi, Criminal Division.
2. Actually the Applicant concedes in paragraph 15 of the sworn statement in support of the summons that there are no criminal proceedings and indeed

he has not proffered any no proof whatsoever that any criminal proceedings have been commenced in a court law against the applicant and that the motor vehicle in issue has been seized to facilitate any criminal proceedings to warrant an application under section 147 of the CP and EC. In any event any relief sought under 147 of the CP and EC is supposed to be channelled to the court which an apprehended person is charged with an offence. The applicant has not established that the High Court of Malawi, Principal Registry, Criminal Division is such a court. When the procedure is clearly set out in the statute the order of the High Court of Malawi, Lilongwe District Registry under Civil Cause no. 480 of 2019 and marked exhibit 'DK3' that the Applicant relies on does not suffice and cannot justify the presenting and determination of this summons before the High Court Criminal Division.

It is a finding of this court therefore that there is no sound legal authority and procedure to support the present summons and this court has no legal authority to preside over it.

NOTING the abovementioned irregularities, this court exercises its discretion to stop the abuse of the process of the court by not assigning a date to hear the summons and hereby proceeds to dismiss the said summons.

Dated this 1st day of April 2020 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga

JUDGE

<i>Case Information</i>	:	
Mr. Kalaya	:	of Liberty Legal Consultants filed documents on behalf of the Applicant.
Respondent	:	Not served / absent.
Ms. F. Ngoma	:	Court Clerk.