



REPUBLIC OF KENYA



Republic v Bor; Kenya Revenue Authority (Interested Party) (Criminal Revision E007 of 2024) [2024] KEHC 15331 (KLR) (29 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E007 OF 2024
AC BETT, J
NOVEMBER 29, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

GEOFFREY CHERUIYOT BOR RESPONDENT

AND

KENYA REVENUE AUTHORITY INTERESTED PARTY

RULING

1. This is an application for revision under Section 362 and 364 of the *Criminal Procedure Code* and other provisions of the law and the *Constitution* of Kenya (2010). By a Notice of Motion dated 14th February 2024, the Applicant moved the court, seeking the following orders:-
 1. Spent
 2. That this Honourable Court be pleased to call for the file in Kakamega Miscellaneous Criminal Application No. E208 of 2023 to examine the records of the subject criminal proceedings therein for the purpose of satisfying itself as to the correctness, legality and or the propriety of the order issued by Hon. Julius Ngar'ngar, CM on 16th January 2024 directing the release of motor vehicle registration No. KCP xxxJ, Mitsubishi Truck to the Respondent herein.
 3. That this Honourable Court be pleased to order for stay of execution of the orders issued on 16th January 2024, directing release of motor vehicle Registration No. KCP xxxJ, pending inter-partes hearing and determination of this Application.
 4. That this Honourable Court be pleased to review, vacate, revise, vary, set aside, and/or discharge the Orders of the Honourable Court issued on 16th January 2024 directing release of motor vehicle Registration No. KCP xxxJ to the Respondent.



5. That this Honourable Court be pleased to make any other order or relief as it may deem just and fair to meet the ends of justice.
2. The application, which is supported by an Affidavit sworn by Charity Kagai, a Prosecution Counsel in the Office of the Director of the Public Prosecution is premised inter alia, on the grounds that on 15th October 2023, a multi-agency team comprising officers from the DCIO – Kakamega Central Sub-County and the Kenya Revenue Authority while in conduct of an intelligence based operation at Shuvumbe area, intercepted motor vehicle registration No. KCP xxxJ which was conveying wheat bran and 350 cartons containing 5,000 sticks of Supermatch cigarettes marked “for export”. The cigarettes were being offloaded at a residential house situated on LR No. Kakamega/Shikoti/838. The driver of the subject vehicle, which was a Mitsubishi Canter (hereinafter referred to as “the truck”) was one Shadrack Kogo. The said driver failed, refused and/or neglected to provide documents evidencing the origin of the consignment and/or payment of duties in respect thereof and so the truck and the consignment were seized by KRA pursuant to Section 214 of the [East African Community Customs Management Act](#) (EACCMA).
3. By Kakamega Miscellaneous Criminal Application No. E208 of 2023, the State sought orders to detain the driver Shadrack Kogo and he was released on cash bail pending investigations. On 28th December 2023, the Respondent, who had been served with Seizure Notice Serial No. 54004 by the Kenya Revenue Authority in his capacity as the owner of the truck, filed an application seeking orders for the release of the truck. The Applicant opposed the application and relied on a Notice of Preliminary Objection and an Affidavit sworn by PC. Mark Too.
4. On 16th January 2024, the trial court ordered *inter alia*, release of the truck in an order detailed as follows:-

“Upon This Matter coming up for Ruling on 16th January 2024 before a Mention before Honourable J. K. Ng’arng’ar – Chief Magistrate in the presence of the Ms. Kagai, Prosecution Counsel and Mr. Ombego Co. Advocate for the Applicant:-

It is hereby ordered as follows:-

- a. That the application is certified urgent.
- b. That this honourable court issues an order releasing the subject motor vehicle Registration Number KCP xxxJ Mitsubishi truck/lorry to the applicant, without the disputed consignments.
- c. That the OCS Kakamega Central police station and or any other police station where the subject motor vehicle Registration number KCP xxxJ Mitsubishi/lorry maybe kept, be and is hereby ordered to ensure compliance towards the release of the subject motor vehicle to the applicant forthwith.
- d. That the respondent is at liberty to take photographs of the foresaid motor vehicle, the same is released on running attachment and be availed before the honourable court whenever is required.
- e. That upon the release of the subject vehicle, the said consignment under dispute be stored at the premises of the 2nd respondent pending further court directions in relation to the ongoing case.
- f. That cost be provided for.”



5. Being dissatisfied with the said order, the State promptly moved this court urging the court to exercise its supervisory jurisdiction and set aside the orders of the trial court. The power to revise orders made by the subordinate court is founded on Article 165 (6) and (7) of the Constitution which provides as follows:-

“165 (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

6. The statutory framework for the exercise of supervisory powers by the High Court is laid out in Section 362 of the Criminal Procedure Code which states as follows:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

It is therefore the mandate of this court to examine the record of the subordinate court and to make a determination as to whether there is demonstrable “correctness, legality, propriety of the finding or order recorded” and to satisfy myself as to the regularity of the proceedings before the said court.

7. The Applicant’s allegations are that the truck was conveying uncustomed goods contrary to Section 119 (iii) of the East Africa Community Customs Management Act. To put the subsection into context, the section must be read as a whole and it stipulates:-

“119.

- (1) Where any goods liable to import duty have been imported, or purchased prior to entry for home consumption, by or on behalf of any person, either free of import duty or at a reduced rate of import duty and such goods are subsequently disposed of in any manner inconsistent with the purpose for which they were granted any relief from import duty, the goods shall on disposal be liable to import duty at the rate applicable to goods of that class or description at the time of disposal:

Provided that such duty on disposal shall not be payable (in the case of a natural person) where that person dies and the ownership of such goods is transferred by way of bequest to or inheritance by another person.

- (2) Where it is proposed to dispose of any goods to which subsection (1) applies, then the person responsible for the disposal of such goods shall, furnish the Commissioner with the particulars of such proposed disposal and shall cause the duty thereon to be paid.



- (3) A person who knowingly disposes of or knowingly acquires any goods to which subsection (1) applies without the import duty thereon having been paid in accordance with the provisions of this section commits an offence.
- (4) Where any goods to which subsection (1) applies are disposed of without the payment of the import duty to which they are liable, then the goods shall be liable to forfeiture.”

8. Section 119 (iii) therefore calls for the State to prove that the person caught contravening Section 119 (i) did so knowingly. The Applicant’s case is that the seizure of the Respondent’s truck was to facilitate the investigation by the Kenya Revenue Authority of the violation of the law to wit, the conveyance of uncustomed goods by the driver of the truck. The Applicant further states that the Interested Party established that the Respondent is the registered owner of the truck, which having been caught conveying goods contrary to Section 199 (b) (iii) of the *EACCMA Act* was liable for forfeiture, and therefore served him with a seizure Notice under Section 214 of the EACCMA. Section 214 of *EACCMA* states as follows:-

“ 214.

- (1) Where any thing has been seized under this Act, then, on seizure, unless such thing was seized in the presence of the owner of the thing, or, in the case of any aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons to the owner or, in the case of any aircraft or vessel, to the master:

Provided that-

- (a) notice of seizure shall not be given in any case where any person has, within a period of one month, been prosecuted for the offence by reason of which the thing has been seized, or the offence has been compounded under Part XVIII, and if, after any notice has been given but before condemnation of the thing in accordance with this Act-
 - (i) any such prosecution is brought, then such thing shall be dealt with in accordance with section 215 as if such notice had been given;
 - (ii) the offence is so compounded, then such thing shall be dealt with in accordance with Part XVIII as if no such notice had been given;
- (b) where any such thing has been seized in the presence of any person coming within the definition of owner for the purposes of this Act, then it shall not be necessary for the officer effecting the seizure to



give notice to any other person coming within such definition;

- (c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming within such definition;
 - (d) where a person coming within such definition of owner is not known, then it shall not be necessary for the officer effecting the seizure to give notice to any person.
- (2) Where any goods which are of a perishable nature or are animals are seized, the Commissioner may direct that such goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of the sale shall be retained and dealt with as if they were the seized goods.
- (3) Where any thing liable to forfeiture under this Act has been seized, then—
- (a) if any person is being prosecuted for the offence by reason of which the thing was seized, the thing shall be detained until the determination of such prosecution and dealt with in accordance with section 215;
 - (b) in any other case, the thing shall be detained until one month after the date of the seizure, or the date of any notice given under subsection (1), as the case may be; and if a claim is not made as provided in subsection (4) within a period of one month, such thing shall be deemed to be condemned.
- (4) Where any thing liable to forfeiture under this Act has been seized, then, subject to subsection (1) (a) and subsection (3). (a) the owner may, within one month of the date of the seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner claim such thing.
- (5) Where any notice of claim has been given in accordance with subsection (4), then the thing seized shall be detained by the Commissioner to be dealt with in accordance with this Act.
- (6) The Commissioner may permit such thing to be delivered to the person making a claim, in this Part referred to as the claimant under subsection (4), subject to the claimant giving security for the payment of the value of the thing, as determined by the Commissioner in the event of condemnation of the thing.”

9. By an order dated 13th March 2024, the Interested party’s application to be enjoined as an Interested party to the suit was allowed and the court directed that the Interested party’s pleadings and documents be considered alongside the other parties’ documents.



10. The Interested Party contends that once the truck was seized it became the subject of customs control. Section 16 (1) stipulates that seized goods, inter alia are subject to customs control and cannot be interfered with except with the authority of the Commissioner or in accordance with the Act. It is the Interested Party's further averment that the suspects have been charged in court vide Kakamega CMC.CR. No. E306/2024 and are currently facing the following charges:-

- (1) Conveying uncustomed goods contrary to Section 199 (b) as read with Section 199 (iii) of the [EACCMA](#).
- (2) Being in possession of excisable goods which have been removed from a place where they ought to have been charged with excise duty, before such duty had been charged, contrary to Section 39 (5) as read with Section 41 (1) of the Excise Duty.

The affiant in the Interested party's affidavit averred that the Respondent had filed an application for release of the truck on 23rd October 2023 which he withdrew and filed a similar application on 28th November 2023. It is the orders given pursuant of the application dated 28th November 2023 which led to the present application for revision.

11. The Interested party contends that the Respondent should have filed an application for review of the seizure orders with the Commissioner of the Interested party as provided by Section 229 (1) of the [EACCMA](#). Alternatively, the Interested party avers that Section 213 (1) of [EACCMA](#) provided that if a police officer seizes anything liable for forfeiture and such thing is required for use in legal proceedings, the police officer may, subject to Section 213 (5) either:-Keep that thing in the police custody until the proceedings are completed or,Keep that thing until it is decided that no proceedings shall be instituted.

12. It is the Interested party's contention that in ordering the release of the truck, the trial court was guided by extrinsic factors rather than the mandatory provisions of [EACCMA](#) which flow from the cited provisions.

13. In response, the Respondent swore a replying affidavit in which he stated that the application by the Applicant was actuated by malice because the Applicant's staff and the DCI, Kakamega demanded a bribe and when the Respondent did not pay up, they decided to proceed with the present applications. According to the Respondent, his application was proper and the orders issued after hearing valid since the court found that the holding of the truck from 15th October 2023 without formally charging the Respondent was unconstitutional and unjustified. The Respondent contended that as at the time of drawing his affidavit on 28th February 2024, no one had been formally charged and therefore it is manifest that the Applicant and Interested party were not acting in good faith.

14. The application was canvassed by way of written submissions.

15. The Applicant submits that the court has to balance the interests of the Respondent with the interests of the Interested Party. He posits that although the Respondent has a right to be presumed innocent until proved guilty there is an obligation for the State to ensure there is preservation of evidence and proper chain of custody of such evidence. The Applicant relies on the case of [Director of Public Prosecution -v- Ibrahim Asala Mchangwa & 2 others](#) [2022] eKLR and [Kenya Revenue Authority - v- Joseph Namwai Lotiki & 2 Others and Office of the Director of Public Prosecutions \(Interested Party\)](#) [2022] eKLR.

16. The Applicant further submits that the Respondent's interests can be served by an expeditious hearing of the trial against the driver of the subject truck since the Commissioner has laid a claim of the truck. It is the Applicant's submissions that the Commissioner has the leeway to invoke the provisions of Section 214 (6) of the [EACCMA](#) without necessarily going into to rigours of procedure of how and



when the claim has been made. The Applicant urges the court to review the orders of the subordinate court and find a balance of interests or rights in issuing the orders it shall issue so that none of the parties are prejudiced at this stage.

17. In support of the application for revision, the Interested party submits that there was an error apparent on the face of the record on five fronts:-

- (i) That since the court had pronounced itself with respect to the application to hold the driver in custody, the court was functus officio and the Respondent, who was not a party to the original proceedings, could not be heard in that cause unless the same was re-opened by review and that the respondent ought to have filed separate proceedings altogether.
- (ii) The trial court failed to consider the Respondent's notice of Preliminary Objection.
- (iii) The Interested party, being the seizing authority was not listed as a party or Respondent to the application dated 28th December 2023 therefore infringing on their rights.
- (iv) The order was directed at the OCS and DCIO – Kakamega Police Station for compliance notwithstanding that the seizure was done by the Interested party.
- (v) The trial court issued the release orders without reference to the mandatory provisions of the EACCCMA relating to seized items.

18. The Interested party also submits that the truck was procedurally seized in strict compliance of Section 213 of EACCCMA and relied on [*KRA -v- John Peter Okello*](#), High Court Misc. Application No. E091 of 2021 where the Court stated:-

“It did appear to this court that the seized goods can only be released to the owner prior to the institution of the proceedings as envisaged under Section 213(4) and Section 213(7) of the *EACCCMA* and/or after a person has been acquitted under Section 215(2) of the *EACCCMA*...”

19. Further, the Interested party submits that the right procedure for the Respondent was to lodge a claim for the truck within one month of seizure as provided by Section 214 (3) of the *EACCCMA*. Additionally, the Interested Party submits the non-exhaustion of statutory remedies had the effect of divesting the court of jurisdiction and cites the case of [*Speaker of the National Assembly -v- Speaker*](#) [1992] KLR where the Court of Appeal held thus:-

“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

The Interested Party also relies on the case of [*Republic -v- Independent Electoral and Boundaries Commission \(IEBC\) Ex parte National Super Alliance \(NASA\) Kenya & 6 other*](#) [2017] eKLR as well as [*Geoffrey Muthinja Kabiru & 2 others -v- Samuel Munga Henry & 1756 others*](#) [2015] eKLR.

20. The Interested Party contends that the tests to be applied before releasing items that have been seized and are subject to customs control in accordance with Section 16 (1) (i) of the *EACCCMA* are as follows:-

- (i) Whether the item is liable for forfeiture.
- (ii) Whether there is a prosecution case pending under *EACCCMA* in relation to the seized item.



- (iii) Whether the criminal case has been heard and determined.
 - (iv) Whether the Accused person(s) has(have) been convicted or acquitted.
 - (v) Whether an application for review has been lodged.
21. The Interested Party therefore submits that the Respondent's contention that he purchased the subject truck on a loan which he is servicing is not the only ground that the court needed to take into consideration in making its decision and that in an event, liability for forfeiture under Section 217 (1) of the EACCMA is not contingent upon the owner's knowledge of involvement in the offence. On the basis of the said submissions, the Interested party urges this court to revise, vary, set aside or discharge the orders dated 16th January 2024.
22. By dint of Section 362 of the Criminal Procedure Code, this court is enjoined to make a finding as to whether impugned order was proper. I have carefully considered the application, the Respondent's replying affidavit, the submissions by the Applicant and Interested Party, and the authorities relied on by the parties. It is not in dispute the subject motor vehicle registration Number KCP xxxJ Mitsubishi Canter, which has hitherto been referred to as the truck, was the subject of an investigation under Section 199 (b) (iii) of the EACCMA at the time it was seized. The statutory seizure Notice was issued by the Interested Party. The truck therefore became an exhibit as well as a potential item for forfeiture under Section 213 (5) and the Section 214 of the EACCMA.
23. This court finds that once the truck was seized by the Interested Party, the Respondent's recourse was to apply the statutory dispute resolution mechanisms provided for by EACCMA. Section 229 (1) of the EACCMA provides that:-
- “A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.”
24. As submitted by the Applicant, the EACCMA provides a clear procedure for aggrieved persons to challenge customs-related decisions. The Respondent therefore ought to have lodged an application for review of the decision before the Commissioner. This position was enunciated in the case of JRCA No. 137 of 2019, KRA & 2 others & Director of Criminal Investigations & 1 others (Interested Party) & CMC DI Ravenna Itinera JV Exparte where the Court held as follows:-
- “My reading of the above provisions is that a person must submit himself to the processes provided under the above sections and if aggrieved by the decision, he has recourse in the Tax Appeals Tribunal. The above provisions are to be read together with section 231 of EACCMA which provides for establishment of Tax Appeals Tribunals in the partner states in the following words:-
231. Subject to any law in force in the Partner States with respect to tax appeals, each Partner State shall establish a tax appeals tribunal for the purpose of hearing appeals against the decisions of the Commissioner made under section 229.”
25. In its Preliminary Objection before the trial court, the Applicant had highlighted the fact that the application for release of the subject vehicle was in violation of the statutory laid down procedure under Section 229 (1) of the East Africa Community Customs Management Act. However, the trial court did not consider the said objection and instead, based its decision on extrinsic factors.



26. The trial court did not have jurisdiction to entertain the Respondent's application since the Respondent had not exhausted the laid down statutory procedure. In the case of Republic -v- Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte Nasa Kenya & 6 others (*Supra*), the court pronounced itself thus:

“The issue of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks judicial review of that action without pursuing available remedies before the agency itself. The Court must decide whether to review the agency's action or to remit the case to the agency, permitting judicial review only when all available administrative proceedings fail to produce a satisfactory resolution.”

27. Additionally, the Court of Appeal in the case of Geoffrey Muthinja Kabiru & others v Samuel Munga Henry & 1756 others (*Supra*) states as follows:-

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution.”

28. In absence of the requisite jurisdiction, the orders made by the Honourable court were then devoid of legality.

29. Aside from the procedure adopted by the Respondent in securing the release of the truck, the court is also faced with the issue of the truck being an exhibit. It was evident from the Affidavit sworn by PC. Mark Too that there was an investigation into an incident of conveying uncustomed goods contrary to Section 119 (iii) of the EACCMA. The truck was one of the items seized in the course of the investigation and therefore became an exhibit. The trial court allowed the conditional release of the subject truck on a running attachment. The order was premised on Section 177 Rule A of the Criminal Procedure Code, Sections 1A, 3, 3A Civil Procedure Act and Articles 40, 47 and 50 of the Constitution of Kenya.

30. The power to order the release of goods under Section 177 (a) of the Criminal Procedure code which the Respondent had relied on states as follows:-

“Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

- (a) That the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct.”

31. A simple interpretation of Section 177 (a) is that the person applying for the release of the goods must have already been charged and appeared before the court. The procedure would then be that after the goods have been identified and produced as an exhibit, then the court would, upon the owner's application subject to there being no dispute as to ownership and to other relevant legal considerations



including the goods being subject to forfeiture, release the goods to the owner. In *Petroleum Institute of East Africa v Republic & 2 others* [2021] eKLR, the court had this to say:-

“A court has jurisdiction to restore property to an individual it believes to be entitled to it (Vide section 177(a) of the *CPC*). However, the question begging would be, under what circumstances the property should be released? Procedurally, for an exhibit to form part of evidence, it has to be presented for purposes of identification so that the court inspects it prior to being admitted or not depending on its legality. Prior to presentation in court, all evidence to be used during trial must be preserved. This duty that is bestowed upon the investigator of a case is for the purpose of due process and fair trial. Evidence herein of the motor-vehicle was detained following investigations carried out. When the court granted the conditional orders, releasing the exhibit, it had not been introduced in evidence. I am persuaded by the decision in the cases of *Elijah Nyakebondo v Republic* (2017) eKLR and, *Republic v Everline Wamuyu Nguro...*(2016) where respective courts held that until property or properties are produced before subordinate courts as exhibits, the court will not have jurisdiction to order release of the same.”

32. Once the trial court was apprised of the existence of investigations into the use of the truck in conveying uncustomed goods, the court ought to have warned itself of the likelihood of the release order interfering with the ongoing investigations. In the Replying Affidavit by PC. Mark Too, the Applicant had explicitly laid down its case and demonstrated why an order for release of the truck at that point should not issue. The Applicant had highlighted Section 214 (3) (a) of the *EACCMA* and reiterated that the truck should not be released until the determination of the intended prosecution of the subjects.
33. In the impugned ruling, the trial court did not address its mind to any of the issues raised by the Applicant. As a result, he arrived at a faulty decision. The trial court’s grounds for allowing the Respondent’s application was that the Respondent was not culpable as it was his driver who had control of the truck at the time it was found conveying the uncustomed goods. Secondly, the trial court faulted the Republic for failure to complete investigations within reasonable time since by the time of the hearing of the application, three months had passed since seizure of the truck. The trial court was of the opinion that in the event the Applicant decided not to press any charges against the Respondent, he would have suffered untold loss and therefore the lesser evil was to release the truck on a running attachment.
34. I have carefully considered the relevant provisions of the law. It was not open for the trial court to make the determination that it made. Even if the truck was not the subject of a statute that called for its forfeiture, it was an exhibit and could only be released upon its production. In the *Petroleum Institute of East Africa* case (*Supra*), the Court held as follows:-

“A motor-vehicle that has been seized and is presented before court may be restored to the lawful owner following directions of the court but such an order can only be granted after it is identified, adduced in evidence, and, following discharge of proof and the relevant law in question. A court of law would not be expected to pry into the prosecution’s case before it is presented.”

35. Notwithstanding the court’s consideration that the investigation had taken long and the lesser evil was to order the release of the truck, the law on the procedure to follow in order to secure the release of the truck is clear. The Respondent had failed to move the Commissioner and had not exhausted the statutory remedies outlined in Section 229 (1) of the *EACCMA* as a prerequisite to approaching



the court. Additionally, the truck was an exhibit that was yet to be adduced as evidence in the court and therefore its release was premature. Had the trial court considered the Applicant's Preliminary Objection and Affidavit in reply to the Respondent's application, it would have made a different determination.

36. Further, the trial court's order was directed at the wrong party since the Seizure Notice was issued by the Interested Party who ought to have been enjoined to the proceedings but was not. The proceedings were therefore irregular as it flew in the face of the fundamental principle of natural justice that a party should not be condemned unheard. By ordering the release of the truck without seeking to hear the party that issued the Seizure Notice, the trial court which had notice that the seizure was executed by the Interested Party acted contrary to the law.
37. For the reasons stated above, I find and hold that the orders dated 16th January 2024 were erroneous, improper and devoid of legality. The orders are therefore reviewed and set aside.
38. I have noted that there is pending Kakamega CMCR. No. E306 of 2024 emanating from the seizure of the truck. It is in the interest of justice that the said case is heard expeditiously. The Respondent is entitled to equal protection and equal benefit of the law in accordance with Article 27 (1) of our *Constitution*. To hold the Respondent's truck for a period exceeding a year is to deprive him of that right. However, since the Respondent did not follow the prescribed procedure of laying claim of his truck, I will not make any order in his favour save to direct that the Applicant do ensure that the truck is produced as an exhibit in the next date when the Criminal case is scheduled for hearing.
35. Those are the orders of the Court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER, 2024.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Applicant

Ombengo for the Respondent

Ms. Chala holding brief for Maina for the Interested Party

Court Assistant: Polycap

