



REPUBLIC OF KENYA



**Njoroge v Director of Public Prosecutions (Miscellaneous Criminal Case E207 of 2024) [2024] KEHC 16047 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16047 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL CASE E207 OF 2024  
SM MOHOCHI, J  
DECEMBER 19, 2024**

**BETWEEN**

**ALICE WANJIRU NJOROGE ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. Before me is the Notice of Motion dated the 31<sup>st</sup> October, 2024 expressed to be brought pursuant to Order 51 Rules 1,2, and 3 of the [Civil Procedure Rules](#) wherein the Applicant seeks the following orders;
  1. Spent.
  2. Spent.
  3. That there be an order for the OCS Nakuru Police Station to release the above motor vehicles registration numbers KBK 502Y and KDD 287X.
  4. That costs of the application be provided for.
2. The Application is premised on the grounds on the face of the motion and supported by the Applicant's affidavit sworn on the same date.
3. This Court had in the interim ordered on the 1<sup>st</sup> November 2024 that, Motor Vehicles registration number KBK 4502Y and KDD 287X be forthwith released and the Applicant was to file an affidavit confirming the release within three days.
4. On the 6<sup>th</sup> of November 2024 the order was yet to be complied with and the Officer Commanding police station sent to court the OC Crime Nakuru Central Police station Chief Inspector Moses



Mbalwe who indicated that a criminal prosecution had been initiated on theft of goods on transit and that the two motor vehicles formed part of the exhibits.

5. That the two motor vehicles are not registered in the name of the Applicant and that an application for release of the motor vehicles can be made before the trial court.
6. The Applicant further agitated the response and the court directed parties to file written submissions of which the Applicant complied while the Respondent did not.

### **Applicant's Submissions**

7. That on 6<sup>th</sup> November 2024, when the present matter was slated for mention for compliance with the orders of this court, the OCS Nakuru Police Station through the prosecutor decided to charge the applicant in Nakuru Criminal Case No. E2420 OF 2024 which was an afterthought, an attempt to circumvent and suppress the orders of this honourable court.
8. That, during preliminary hearing at the lower court, the Hon. Bildad Ochieng was informed by counsel for the applicant that there is a valid High Court order issued by your lordship directing the OCS Nakuru Police Station to release motor vehicles registration numbers KBK 502Y and KDD 287X to the applicant, that the said High Court order is valid and has not been set aside, varied, vacated and or appealed against hence ought to be complied with in the first instance and that departing from it would be an affront to contrary to judicial precedents.
9. However, the OCS Nakuru Police Station through the investigating officer argued the order did not direct the vehicles to be released to the applicant which argument was without substance. That it is the applicant who moved this honourable court via miscellaneous application and any orders sought and granted were in favour of the applicant. The lower court found in favour of the prosecution and varied the orders of this honourable court by directing the said vehicles be released to the registered owner despite court being adequately informed the applicant is the lawful wife to the registered owner and that the two vehicles are jointly owned by the applicant and her husband whom the police are seeking to arrest upon presenting himself to Central Police Station for the release of his two vehicles.
10. The Applicant has framed the following Issues for determination
  - a. Whether there is a valid order of this honourable court directing OCS Nakuru Police Station to release of motor vehicles registration numbers KBK 502Y and KDD 287X
  - b. Whether the lower court has jurisdiction to vary an order of this honourable court?
  - c. Whether the OCS and the investigating officer should be held in contempt of court?
11. As to whether there is a valid order of this honourable court directing OCS Nakuru Police Station to release of motor vehicles registration numbers KBK 502Y and KDD 287X?
12. That it is not in doubt this court issued an order on 4<sup>th</sup> November 2024 directing the OCS Nakuru Police Station to release motor vehicles registration numbers KBK 502Y and KDD 287X to the applicant. This order was duly served by learned counsel for the applicant Ms Nancy Njoroge to the Deputy OCS who instructed his officer to receive the same on 5<sup>th</sup> November 2024 at around 9.27am.
13. The Applicant submit there exist a valid order of this honourable court that has not been set aside, varied, vacated and or appealed against hence the same has full force of law.
14. Whether the lower court has jurisdiction to vary an order of this honourable court, the binding nature of precedents in our judicial jurisprudence is that lower courts are bound by decisions of the High Court unless the said decision is set aside, varied and or appealed against. This therefore means no



judicial officer should attempt to alter the dictates of an order made by a superior court. Your lordship directed the OCS Nakuru Police Station to release motor vehicles registration numbers KBK 502Y and KDD 287X to the applicant

15. That, upon pressing charges against the applicant which charges were an afterthought and meant to frustrate the order made by this court, that Hon. Bildad Ochieng despite having been shown the order of this honourable court by counsel for the applicant and having been informed that at the time said motor vehicles were seized by police, they were in possession and control of the applicant who is the lawful wife to the registered owner and that said vehicles are jointly owned proceeded to direct that the said motor vehicles be released to the registered owner which direction was in total contradiction to the order made by this honorable court.
16. The Applicant submit the judicial officer went beyond his scope of jurisdiction in directing contrary to the orders of this court, in buttressing o argument, the Applicant relies on the case of *Republic v Feisal Mohamed & Others* [2015] eKLR in which Justice Muya held at page 5 of the ruling thereof thus;

“It was improper for the sixth Accused, to go back to the lower court and purport to make an application for bond for whatever reason. It was improper for the trial magistrate to clothe himself with Jurisdiction which had been ousted from him and purport to review the orders of a Judge.”
17. As to whether the OCS Nakuru Police Station and the investigating officer should be held in contempt of court? That this court directed parties to appear before it on 5<sup>th</sup> November 2024 for mention for compliance with the orders of this court issued on 4<sup>th</sup> November 2024, The OCS was served on 5<sup>th</sup> November 2024. The orders of this court have not been complied with and there is deliberate attempt by the OCS to thwart, suppress and frustrate the valid orders of this court which orders have not been set aside, varied, vacated and or appealed against and the OCS ought to be held in contempt.
18. Reliance is placed on the case of this court in *Godfrey Njogu Ngugi & Others v Priscilla Nyambura Kirina* [2007] eKLR, Mutungi J in finding the police officer was in contempt of this court held as follows;

“Accordingly, for the Respondent to aver that she cannot comply with this court's order because of another order of this same court, is total abuse of the court process. The Respondent knows that she concealed the (truth) material facts from the court when she was issued with the court order of 2/11/06 without disclosing that HCCC 2974 of 1995 was still subsisting and was as yet to be finally determined.

I accordingly find and hold that the Respondent has no defence to the contempt of this court's orders, dated 8/8/06. The Respondent has shown the worst disregard and disobedience of this court's orders. She deserves to be punished if the court's authority and dignity is to be preserved and upheld for the good of all those who cherish and respect the Rule of law.

All in all, the Chamber Summons herein, dated 13/11/06 succeeds, and I find and hold the Respondent to be in contempt of this court's orders. Accordingly, I order that the Respondent:

- a) Be imprisoned for one month or pay a fine of Kshs. 150,000/-In lieu of the prison term.



- b) The Respondent do reinstate the applicant back to the suit premises under the supervision of the OCS, Kabete.
  - c) The Respondent do return to the applicant all the attached goods unconditionally, under the supervision by the OCS Kabete.
  - d) The Respondent not to interfere with the peaceful possession and enjoyment of the suit premises of the Applicant herein until the final hearing and determination of HCCC 2974 of 1995.
  - e) The Respondent to pay the costs of this application to the Applicant.
19. The Applicant submit in conclusion that, this is a superior court of record whose orders are not given in vain hence ought to be obeyed to the letter. We further submit the lower court erred by assuming jurisdiction it did not have in varying orders of a superior court which action is an affront to well-known canons of law that lower court is bound by orders of a superior court, urging that this court to exercise its powers by ordering the OCS to appear before it at the time of the ruling and punish the said officer for contempt.
20. The Applicant further urge the court to forthwith order the release of the two motor vehicles to the applicant in giving effect to the orders issued on 4<sup>th</sup> November 2024 by this court.

### **Respondent's Case**

21. The Respondent has not filed written submissions but made representation that the Application was overtaken by events when the Applicant together with for (4) other were arraigned and charged in Nakuru Criminal Case No. E2420 OF 2024 and that the two motor vehicles were produced in exhibit and an order for the release made to the registered owner by the trial court.

### **Determination**

22. I have carefully considered the Application and the affidavit in support, the only issue for determination is whether the application is merited.
23. Going to the substance of the present application, the Applicant is seeking an order for release of the two motor vehicles as both of them are tools of trade supporting the family business Petra Distributors and Wakaguka Stores a joint family business and that no charges have been preferred upon them.
24. The Registered Owner of the Motor vehicles Francis Njoroge Gathuru is the Applicant's Husband.
25. The Interim Order made on the 1<sup>st</sup> November 2024 was premised on there being no criminal prosecutions pending since 18<sup>th</sup> October 2024 when the vehicles loaded with sugar were impounded and detained. The circumstances changed when the criminal prosecution was preferred.
26. In view of the proceedings pending before the trial court Nakuru Chief Magistrate's Court Criminal Case No. E2420 OF 2024 and the trial court Order for the release of the motor vehicles to the registered owner, it now remains debatable for the Applicant to continue insisting on an interim order that catalyzed the preferring of charges before the trial court Nakuru Chief Magistrate's Court Criminal Case No. E2420 of 2024.
27. The Court is of the considered view that, the Application was overtaken by events on the 6<sup>th</sup> November 2024 when criminal charges were preferred and that any grievance should be raised in the trial court and any consequent dissatisfaction may be subject to review or Appeal as is provided for in the law.



28. The Applicant's spouse and registered owner may as well secure the release of the vehicles as per the court order by the trial court.
29. With regard to holding the OCS in contempt or otherwise summon him, the court is of the view that no proper motion for contempt proceedings has been filed and the Applicant is bound with his pleadings and cannot modify the Application or reliefs sought without leave of the court
30. In sum, the Notice of Motion application dated October 31, 2024 is without merit and is dismissed.
31. There shall be no orders as to costs given the circumstances.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**MOHOCHI S.M.**

**JUDGE**

