

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MISCELLANEOUS CRIMINAL APPLICATION NO E017 OF 2021

JACKLINE WANJIKU KUNG'U.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. In *Maralal SPM Criminal Case No 49 of 2020*, the accused there, one MUNGAI WANJIRU, was charged with *dealing in endangered species* contrary to **section 92(2)** as read with **section 105 (a) & (b)** of the *Wildlife (Conservation and Management) Act, No 47 of 2013*. It was alleged in the particulars of the offence that on 28/01/2020 at Mugie Ranch area along Maralal–Nyahururu road in Laikipia North Sub-County within Laikipia County, jointly with others not before court, he was found transporting endangered tree species, namely *East African Sandalwood (Osiris Lanceolata)* weighing approximately 600 kg, with a street value of KShs 2.5 million, using motor vehicle registration number KCC 321P, make Toyota Prado, without a permit from the Director–General, *Kenya Wildlife Service*. After trial the accused was acquitted.

2. The trial court then directed that the motor vehicle KCC 321P be released to the owner thereof, **JACKLINE WANJIKU KUNG’U**, subject to any appeal against the acquittal being preferred by the Republic. Jackline Wanjiku Kung’u is the Applicant in the present matter.

3. Indeed the Republic preferred an appeal against the acquittal of the accused vide *Nanyuki HC Criminal Appeal No 53 of 2020*. That appeal has not been prosecuted to date. By reason of the appeal the Applicant’s aforesaid motor vehicle continues to be held at Maralal Police Station.

4. The Applicant then filed the present application by **notice of motion dated 05/05/2021**. The main relief sought in the application is that the Applicant’s motor vehicle registration number KCC 321P Toyota Land Cruiser Prado, **“currently impounded by the OCS Maralal and held at Maralal Police Station be released to the Applicant...”**. One of the grounds given for the application is that the motor vehicle is not a subject of the Respondent’s appeal.

5. It appears that the fact that the Applicant is the owner of the motor vehicle is not in contention. It also appears that there is no contestation that the Applicant was not involved in the criminality leading to the charge in *Maralal SPM Criminal Case No 49 of 2020 (Republic –V- Mungai Wanjiru)*, which was perpetrated using the motor vehicle. Indeed, in the petition of appeal in *Nanyuki HC Criminal Appeal No 53 of 2020 (Republic –V- Stephen Mungai Wanjiru)* the order sought is that the court do allow the appeal and **“convict the Respondent accordingly”**. No order is sought in respect to the motor vehicle.

6. In his own written submissions in respect to the application at hand, learned counsel for the Respondent has stated –

“We are however not opposed to the application by the Applicant for the conditional release of (the motor vehicle) on the ground that the Applicant was an innocent party to (Maralal SPM) Criminal Case No.49 of 2020 (R V Steven Mungai Wanjiru). (Emphasis supplied)....”

7. That being the view of the Republic regarding the motor vehicle in question and its owner, there is absolutely no reason for the Republic to continue holding the motor vehicle, as it is clearly not intended to seek any order of forfeiture of the motor vehicle in the event that the appeal against acquittal succeeds.

8. I will for the above reasons allow the application by notice of motion dated 05/05/2021, and I hereby direct that the motor vehicle registration number **KCC 321P**, make **Toyota Land Cruiser Prado**, be forthwith and unconditionally released to its owner, the Applicant herein, **JACKLINE WANJIKU KUNG’U**. It is so ordered. There will be no order as to costs of this application.

DATED AND SIGNED AT NANYUKI THIS 23RD DAY OF FEBRUARY 2022

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 24TH DAY OF FEBRUARY 2022