



REPUBLIC OF KENYA



Director of Public Prosecutions & another v Whiteridge Ventures Limited & 2 others (Criminal Revision E118 of 2022) [2022] KEHC 13276 (KLR) (Crim) (22 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E118 OF 2022
CW GITHUA, J
SEPTEMBER 22, 2022**

BETWEEN

**DIRECTOR OF PUBLIC PROSECUTIONS 1ST APPLICANT
KENYA REVENUE AUTHORITY 2ND APPLICANT**

AND

**WHITERIDGE VENTURES LIMITED 1ST RESPONDENT
EUNICE MARANGO WANJIKU 2ND RESPONDENT
STEPHEN THIKU KAIRU 3RD RESPONDENT**

RULING

1. This ruling relates to the applicants' prayer for interim stay of execution of the orders issued by the learned trial magistrate in Criminal Case No E476 of 2022 on June 23, 2022 pending the hearing and determination of the notice of motion dated July 6, 2022.
2. The notice of motion was filed by the two applicants namely, the Director of Public Prosecutions (DPP) and the Kenya Revenue Authority (KRA) seeking revision of the orders made by the trial court directing the applicants to release to the 1st respondent, Whiteridge Ventures Limited, motor vehicles registration number KCN 991F Isuzu FRR and KDG 113V Isuzu FRR. The two vehicles were confiscated by the 2nd applicant (KRA) in premises in which the 2nd and 3rd respondents were allegedly found in possession of assorted alcoholic drinks affixed with counterfeit excise stamps and other unaccustomed goods contrary to the provisions of the *East Africa Community Customs Act* of 2004 and *Excisable Goods Management System Regulations* of 2017 which led to the prosecution of the 2nd and 3rd respondents in Criminal Case No E476 of 2022. The case is pending hearing before the trial court.



3. A look at the notice of motion reveals that the applicants are seeking revision and interim stay of the impugned orders mainly on grounds that if the aforesaid vehicles are released to the 1st respondent, they will no longer have control over them yet the vehicles are intended to be used as crucial exhibits in support of the prosecution case in the lower court; that if the orders are not granted, the applicants will suffer prejudice since they will lose their exhibits and use of photographic evidence will be insufficient to prove their case.
4. The application was strongly contested by the 1st respondent through a replying affidavit sworn on July 18, 2022 by its director Boniface Kingori Wangui and oral submissions made by learned counsel, Ms Mukami during the hearing. The submissions by Ms Mukami were adopted by Mr Mathenge who appeared for the 2nd and 3rd respondents.
5. In a nutshell, the 1st respondent opposed the application on grounds that it was the registered owner of the two motor vehicles which it used as tools of trade in its transport business; that it was not a party to the criminal proceedings instituted against the 2nd and 3rd respondents and that continued detention of the motor vehicles was unfair, unjust and illegal and was causing it heavy financial losses. The respondents also argued that given the conditions attached to the order for release of the vehicles, the applicants have not demonstrated that they are likely to suffer any prejudice if their application was disallowed.
6. I have carefully considered prayer 1 of the application and all the material placed before me including the record of the trial court. In determining this prayer, I will refrain from making any findings of fact on issues that may have a bearing on the substantive prayer for revision for fear of prejudicing the hearing and determination of that prayer.
7. That said, I will now turn my focus on the orders the applicants are requesting this court to stay. A cursory look at the impugned orders clearly show that the trial court directed release of the motor vehicles subject to fulfilment of four conditions, namely:
 - i. Depositing of their original logbooks in court.
 - ii. Photographing of the vehicles by the investigating officer.
 - iii. Registration of a caveat by the investigating officer with the Principal Registrar of Motor Vehicles to prevent any sale or change of ownership of the motor vehicles during the pendency of the criminal case.
 - iv. Physical production of the motor vehicles in court at every hearing date.
8. It is important to note that in support of their application for interim stay, the applicants did not contend that the trial court erred either in law or in fact in making the impugned orders. The applicants did not also contest the claim that the 1st respondent is the registered owner of the subject motor vehicles. They only expressed their fear that if the order was executed, they are unlikely to recover the vehicles to produce them in court as exhibits which will adversely affect prosecution of the criminal cases pending against the 2nd and 3rd respondents.
9. With due respect to the applicants, it is my finding that their apprehension that release of the vehicles with automatically lead to their inability to produce them as exhibits is completely unfounded considering the conditions that were imposed by the lower court to their release. The conditions which I have reproduced earlier were clearly meant to preserve the motor vehicles as exhibits since they ensured that their ownership did not change hands during the pendency of the criminal cases and that the vehicles would be physically availed in court on each hearing date. As these were conditions precedent



to the release of the motor vehicles, it is difficult to understand the applicants' argument that if released, the vehicles will no longer be available to be produced as exhibits in support of their case.

10. The applicants appear to be of the view that if the vehicles are released, the 1st respondent will disobey the court order directing it to be producing the vehicles in court on hearing dates. The 1st respondent has through an affidavit sworn by its director, pledged to comply with the conditions issued by the trial court and even if this pledge was not made, the 1st respondent, just like any other corporate or individual citizen has a duty to comply with court orders and in case of any default, the court has mechanisms of enforcing its orders to ensure that they are obeyed. As noted earlier, compliance with the conditions imposed by the trial court gives the applicants an opportunity to produce the vehicles as exhibits in support of their case if they so wish.
11. Flowing from the foregoing, I agree with Ms Mukami and Mr Mathenge's submissions that release of the motor vehicles to the 1st respondent as ordered by the trial court will not occasion the applicants any prejudice. It is thus my finding that the applicants have not demonstrated sufficient cause to justify grant of orders of interim stay of execution of the impugned orders pending hearing of the substantive prayer in the notice of motion dated July 6, 2022. I therefore decline to grant the stay orders as sought.
12. Having found as I have above, in order to expedite hearing of the main revision application so as not to unduly delay hearing of the criminal cases pending before the trial court, I direct that the application be fixed for hearing on a priority basis.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2022.

C. W. GITHUA

JUDGE

In the presence of:

Mr. Kiragu for the applicants

Ms Mukami for the 1st respondent & holding brief for Mr. Mathenge for the 2nd & 3rd respondents

Ms Karwitha: Court Assistant

