



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kini (Criminal Revision E001 of 2022)
[2022] KEHC 14689 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION E001 OF 2022
A. ONG'INJO, J
OCTOBER 28, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

MOHAMED HASSAN KINI RESPONDENT

RULING

1. The Respondent Mohamed Hassan Kini is an Accused in Mombasa Chief Magistrate's Court Criminal Case No. E1928 of 2021 in which he is charged with the offence of trafficking in narcotic drugs contrary to Section 4 (a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994 in four counts. He took plea on 20.9.2021 and was released on bond of Kshs. 500,000 with surety of a similar amount or in the alternative cash bail of Kshs. 200,000 with a contact person to undertake in writing that he or she will ensure the Accused's attendance in court as and when required.
2. By an application dated 8th October 2021, the Respondent sought for the release of motor vehicle Registration number KCV 894 V make-Daihatsu Mira which was seized and held in custody by the police for allegedly being used in transportation of narcotics.
3. The Respondent's application was opposed by the Replying Affidavit sworn on 15.11.2021 by PC Fred Makokha.
4. Upon consideration of the application, the trial magistrate concluded that the motor vehicle is an income generation to the applicant and it is not fare to keep it in police custody pending the hearing and determination of the case. She ordered the release of the motor vehicle on certain conditions.
5. The state was aggrieved by the ruling and by a letter dated 1.2.2022, they requested that the trial court file be paced before the judge for revision of the ruling delivered on 31.1.2022 pursuant to Article 165 (6) and (7) of *the Constitution* 2010 and Section 362 and 367 of the Criminal Procedure Code. They sought that the judge examines the propriety of the said ruling and order a stay of execution pending



the hearing and determination of the said application. The application is based on the grounds on the face of it.

Determination

6. On an account of the order issued on 19.1.2022 in High Court at Nairobi, Anti-Corruption and Economic Crimes Division, Miscellaneous Application No. E037 of 2021, which was to subsist for 90 days, the order issued by the trial magistrate releasing the subject motor vehicle was irregular considering that the subordinate court is bound by the orders of the High Court.
7. It appears that as the time when the application was made in the trial court, the order in Miscellaneous Application No. E037 of 2021 had not been made but there were indications my Annexure "1" that the Asset Recovery Agency was seized of the matter and by the time the ruling was delivered on 31.1.2021, the orders issued in the High Court had not lapsed.
8. The Respondents relied on two authorities namely Mombasa High Court Criminal Revision No. E001 OF 2021, Petroleum Institute of East Africa v Republic & 3 Others and Criminal Revision No. E151 of 2021, Titus Mathenge Nguyo v Republic & Another in support of their position that the subject motor vehicle should be released to the Respondent. I have however noted that in both authorities, the Applicants were not accused persons but owners of the vessels/motor vehicles which were exhibits in cases against 3rd parties. They are therefore distinguishable from the instant case where respondent is the Accused.
9. On the ground that the order was issued while the High Court order was subsisting, the application is allowed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 28TH DAY OF OCTOBER 2022**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for Applicant

Mr. Nabil Advocate for the Respondent

Respondent present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

