



**Kahinga v Officer in Charge Masimba Police Post & 2 others (Miscellaneous Application E358 of 2022) [2025] KEHC 3192 (KLR) (Crim) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 3192 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS APPLICATION E358 OF 2022  
CJ KENDAGOR, J  
JANUARY 20, 2025**

**BETWEEN**

**PAUL MUTI KAHINGA ..... APPLICANT**

**AND**

**THE OFFICER IN CHARGE MASIMBA POLICE POST ..... 1<sup>ST</sup> RESPONDENT**

**THE OCS SOWETO POLICE STATION ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant has moved the Court via a Notice of Motion application dated 25<sup>th</sup> November, 2022 in which he is seeking the following orders;
  - i. Spent
  - ii. That the Honourable Court do issue a summons to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent requiring the said officers to give, file or render a proper inventory detailing the whereabouts condition and security of the two (2) television sets belonging to the Applicant herein which were confiscated from his Business Premises situated along Butere Road in Kayole Embakasi Central Sub-County of Nairobi County. On 8<sup>th</sup> October, 2022 including the relevant Occurrence Book (OB) Number that was used to book the incident antecedent and/or subsequent to the said seizure.
  - iii. That this Honourable Court be pleased to issue an Order restraining the 1<sup>st</sup> Respondent herein, his subordinates, agents and/or any one duly authorized by them or any one claiming under them in any manner or otherwise howsoever from proceeding with the planned illegal



disposal, dispossession sale or transfer of the two (2) television sets that were confiscated from the Applicant's Premises pending hearing and determination of this Application.

- iv. That this Honourable Court be pleased to issue an order directed at 2<sup>nd</sup> Respondent herein to take charge, collect and/or gather the two (2) television sets from the 1<sup>st</sup> Respondent and record it in the Occurrence Book at Soweto Police Station pending hearing and determination of this Application.
  - v. That this Honourable Court be pleased to issue an order directed at 1<sup>st</sup> Respondent herein and/or their subordinate officers and/or any other person acting under or through them to immediately and forthwith release the TWO (2) TELEVISION SETS belonging to the Applicant herein as the said confiscation is illegal and unlawful.
  - vi. That this Honourable court is pleased to give further Orders and/or directions as it may deem fit and just to grant.
  - vii. That costs of this Application be borne by the Respondents.
2. The Application is opposed, and the investigating officer based at Masimba Police Post filed a Replying Affidavit sworn on 12<sup>th</sup> August, 2024.
  3. The Applicant filed a Supplementary Affidavit sworn on 27<sup>th</sup> September, 2024 and submissions dated 27<sup>th</sup> September, 2024.

#### **The Applicant's case**

4. The Applicant asserts that he entered a lease agreement with Anne Njeri Wanjiku, who paid him Kshs.54,000/= as rent and deposit and terminated the lease without notice thereafter. He has further stated in the motion and supporting affidavit that the said Anne caused his arrest and incarceration at Masiba Police Post on claims that he had failed to refund the rent that had been paid.
5. According to the Applicant, upon arrest by 1<sup>st</sup> Respondent's officers, he was forced to sign an agreement with terms of refunding the rent money by 29<sup>th</sup> November, 2022. He stated that following the new agreement, the police proceeded to his premises, where they vandalized and removed the two Television sets that are the subject of this application, which were retained at the police station as collateral for the new agreement for refund.
6. The Applicant faults the 1<sup>st</sup> Respondent's officer's actions, which he has termed as a gross violation of *the Constitution* and contrary to the *National Police Service Act*.

#### **The Respondents' Case**

7. In the Replying Affidavit sworn on 12<sup>th</sup> August, 2024 the Investigating Officer asserted that Anne Njeri Wanjiku lodged a complaint at the Police against the Respondent on account of failure to refund the balance of Kshs.41,000/=. He stated that the Applicant on his own volition agreed to surrender two Television Sets to be held by the complainant (Anne) until he settles the payment.
8. According to the officer, the police neither visited the Applicant's premises nor confiscated the television sets. He stated that the complainant brought the television sets to the station for safekeeping only since she was unable to transport them to Muranga, where she resides. The officer stated the complainant had since collected the television sets before the Applicant instituted the application and further that the police investigations were concluded and no charges preferred as the dispute was civil in nature.



## Analysis and determination

9. Having considered the Application, the Affidavits in support, Replying Affidavit, and Submissions on record, I am of the view that the following are the issues for determination;
  - i. Whether the orders sought are merited;
  - ii. What orders should the court make regarding the application?
10. It is important to note that the current matter before the Court concerns only the question of the television sets. This is significant because the Applicant has raised additional issues related to allegations of arrest, subsequent release, and civil claims between himself and the complainant in the police case.
11. The Applicant argues that the disputes between him and the complainant are civil matters stemming from their tenancy agreement and allegations of its violation. The investigating officer confirmed that the investigation was closed after concluding that the issues between the Applicant and the complainant were indeed civil in nature.
12. The complainant is not a party to these proceedings. The Applicant argues that he was forced to sign the agreement; however, the validity of the agreement cannot be addressed through the miscellaneous proceedings presented here. The Court can only evaluate the situation based on the orders being sought, which pertain to the securing of the television sets.
13. There is a dispute regarding how the television sets came into the police's possession. The Applicant claims that the police confiscated the televisions. The affidavit by Joseph Kamau Kangethe states that he took the television sets to the police station with the Applicant's permission, yet another paragraph states that he did not see the Applicant. The investigating officer asserts that the Applicant voluntarily surrendered them to the complainant. According to the officer, the complainant then stored the televisions at the police station until she could transport them to her residence in Muranga.
14. However, there is no account provided by the complainant. Given that the complainant is an interested party and the primary initiator of the police action in this matter, it was crucial that she be included in the proceedings. The issue with the television sets stems from their agreement.
15. The application in Prayer 2 required that the 1<sup>st</sup> Respondent give an inventory of the whereabouts of the two television sets; the investigating officer stated that the complainant took them even before the proceedings were initiated. As such, prayers 3, 4 and 5 cannot be issued as they pertain to injunctive orders against the disposal, sale and release of the television sets by the police.
16. The police are obligated to investigate any complaint that is filed. The officer stated that the investigation was concluded after confirming that the issue between the Applicant and the complainant was of a civil nature. As a result, no criminal charges were pursued in this case. The television sets were not the subject of the investigations and were not being held as exhibits. If they were, the police would have needed to take an inventory of their possession. There is no evidence suggesting that the police had ulterior motives or sought personal benefit regarding the television sets. The Applicant's call for a finding of coercion in the agreement, along with a conclusion that the transmission of the television sets to the complainant was unlawful, requires substantial evidence, which has not been presented in this case. Additionally, the miscellaneous application may not provide the parties with a fair opportunity to be heard, particularly since the complainant has not been included as a party in the proceedings.



17. In conclusion, it cannot definitively be said that the sets were confiscated or that the officers acted arbitrarily. Since the 1<sup>st</sup> Respondent's officers no longer have possession of the television sets, issuing the requested orders will be in vain.

18. The application is dismissed with no order as to costs.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS  
ONLINE PLATFORM ON THIS 20<sup>TH</sup> DAY OF JANUARY 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Bosibori, ODPP

No attendance for the Applicant

