



**Republic v Mulwa (Criminal Revision E075 of 2025)  
[2025] KEHC 4633 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CRIMINAL REVISION E075 OF 2025  
LW GITARI, J  
MARCH 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**JOSEPH MUNYAO MULWA ..... RESPONDENT**

**RULING**

1. I have considered the request of review of court orders issued in Misc Criminal Application E041/2025 before the Chief Magistrates Court Kitui.
2. The background of the matter is that the respondent in the said application, Joseph Munyao Mulwa, was arrested on 11/03/2025 on allegations of stealing Kshs. 2.9 million vide an OB Report No. 42/11/03/2025. The complaint against him is stealing by servant. The applicant contention is that the complainant is yet to establish the amount of money stolen, the investigating officer needs time to get the M-Pesa Statement of the accused from Safaricom Headquarters and Bank Statements from Equity, Absa, and Post Banks.
3. That under Article 49(1)(f)(i)(ii) of *the Constitution* requires that an arrested person has the right to be brought before court as soon as possible but not later than 24hours after arrest. The applicant filed the application seeking an order that he be allowed to hold the suspect for twenty-one days to enable the investigating officer to complete his investigations. The application was filed before the learned Magistrate but he declined to allow the application in view of the nature of the offence and the nature of the investigations to be conducted. The applicant has moved to this court under its Revision Jurisdiction.



4. I have considered the application. The High Court exercises supervisory jurisdiction over the sub-ordinate courts. This jurisdiction is donated under Article 165(6) & (7) of the Constitution which provides that:

“The High Court has supervisory jurisdiction over the sub-ordinate courts and over any person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.

7. For the purpose of clause (6) the High Court may call for the record of any proceedings before any sub-ordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
5. Section 362 of the Criminal Procedure Code gives the High Court the power to call for an examine the record of any criminal proceedings before any sub-ordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such sub-ordinate court.
6. The applicant is contending that they were not given an opportunity to address the court. In view of the rights of an arrested person to be produced in court within twenty-four hours, the applicants have come up with a practice whereby they apply for extension time to hold the accused person for reasons like need for more time to complete their investigations among others. The courts exercise discretion to extend the time.
7. In this matter the record shows that the accused person was arrested on 11/3/2025 which is the same day the report was made. It is my view that the prosecution gave plausible reasons why they needed to detain the accused. The amount of money alleged to have been stolen was quite substantial and the police needed time to get documents from various banks and from Safaricom. It is my view that the applicants should have been given a reasonable time. The court overlooked the fact that the accused is a flight risk. It was in the interest of justice that the police be given time to collect the information required within a reasonable time. the exercise of discretion by the learned Magistrate was not fair nor was it done judiciously.
8. I therefore have reason to review the said order. In so doing, I am minded that the police are supposed to hold the accused for not more than twenty-four hours and where the court finds it in its power to extend that time, it should not be overly too long. It is my view that holding the accused for twenty-one days which the police were asking is unreasonable.
9. I therefore Order that:
1. The order issued by the learned Magistrate is set aside.
  2. The applicant is granted seven days from today to hold the applicant with effect from today's date and thereafter preset him before court.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 13<sup>TH</sup> DAY OF MARCH 2025**

**HON. LADY JUSTICE L. GITARI**

**JUDGE**

