



**Odhungo t/a Golden Key Travel Consultant v Obare & another (Miscellaneous Criminal Application E032 of 2025) [2025] KEHC 4731 (KLR) (Crim) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E032 OF 2025**

**MW MUIGAI, J**

**APRIL 8, 2025**

**BETWEEN**

**NANCY NAJIRA ODHUNGO T/A GOLDEN KEY TRAVEL  
CONSULTANT ..... APPLICANT**

**AND**

**BRIAN REEVES OBARE ..... 1<sup>ST</sup> RESPONDENT**

**REPUBLIC ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application for revision dated 8/2/2025 was brought by the interested party contesting the subordinate court orders in Milimani Criminal Case No E1114/2024 Republic v Brian Reeves Obare where the accused was charged with the offence of Obtaining by False Pretences contrary to Section 313 of the *Penal Code*.
2. The particulars of the charge sheet are that :-

“On diverse dates between 1/1/2024 and 31/1/2024 at Nairobi City in Nairobi County with intent to defraud the accused obtained money amounting to Kshs 7,948,650/= from Nancy Nanjira Odhungo being money paid for visa applicants at Golden Key Travel Consultants company by falsely pretending that he was in a position to process travel visa ta the Canandian Embassy for the said clients a fact he knew to be false. The accused denied the charged. “
3. The applicant seeks the following substantive orders in revision :-



1. The Honourable court be pleased to recall the file in Chief Magistrate Criminal Case No E 1114/2024 for the purpose of satisfying itself on the legality or propriety of the findings of therein.
2. The court be pleased to quash the order of the magistrate dated 6/2/2025 to release the exhibits.
3. The court be pleased to place the file before another court for trial.
4. The application is brought on the Grounds on the face of the application and the applicant's supporting affidavit filed on even date.
5. The impugned orders of the court refers to the accused application dated 11/11/2024 seeking release of properties confiscated from his house during arrest .The application was contested by the prosecution through the affidavit of Cpl James Nzyoka filed on file on 17/12/2023 .
6. The court issued orders that the listed items in the schedule comprising of ...be released to the accused as they are not exhibits .
7. The complainant contends that the accused application was opposed by the investigating officer who stated that the items were still under forensic investigations and were items used for obtaining money from her .
8. That the lower court released the exhibits without conducting a minitrial before conclusion of the forensic investigations. The exhibits were released at a premature stage and the orders were prejudicial in the administration of justice .
9. The decision was irrational unreasonable and contrary to fair administrative action. the applicant depones that she expressed her dissatisfaction before the trial court.She takes the view that release of exhibits at the conclusion of forensics and examination by the DCIO will be provide the court with sufficient evidence for the court to make a just decision.

### **The Accused Replying Affidavit**

10. The accused filed his replying affidavit on 17/2/2025 .
11. The accused's case is that the application is fundamentally defective since the impugned order is not attached .
12. That the police confiscated several items listed under paragraph 6(a)-(ii) which belonged to the accused and his family members .The applicant and the prosecution did not contest his application and the trial court also found that the prosecution and the investigating officer failed to justify continued confiscation of the items.
13. That some of the confiscated devices containing critical data essential for his defence. That denying him access infringed his rights under Article 50 . Further , devices and the confiscated motor vehicle also comprised essential tools of trade thus interfering with his livelihood and caused him financial strain and hardship.
14. That his tools of trade have no relationship with the charges before court to be and further contain confidential information involving consultancy clients.
15. That the investigations were finalized and the prosecution served the list of inventory and exhibits to be produced during trial.



16. That the documents and Mpesa statements in the inventory confirm that the applicant whose real name is Lydia Inyangala colluded with the police to bring false and malicious charges against him. That the applicant bribed the police while he was in custody.
17. Further that the applicant is an imposter and her dual identity using Nancy Nanjira Ohungo is shrouded with mystery and is a perfect cover for her financial deception.
18. Lastly that she is not a director of Golden Key Travel Consultant Limited and the charges before court are falsified and relate to the applicant's fraudulent actions. The police arrested the accused instead.
19. That accused contends that staying proceedings will delay the criminal case and that the orders for reallocation of the case are unjustified and unproved. The applicant intends to cause delay in the matter and this is prejudicial to his right to timely determination of the matter.

### **Parties Written Submissions**

#### **The applicant's submissions**

20. The applicant frames the issue for determination as whether the lower court correctly exercised its discretion on the matter.
21. That the investigations are ongoing and involve money transactions and communications through cyber forensic analysis.
22. That investigations run from the time of bring complaint and does not end when the accused is charged. That she also indicated in her complainant that some people acting under the accused instructions raided her house and confiscated gadgets. That the only proof available is proof of communication and money transfers between herself, her partners and employees and the accused.
23. That the complainant is entitled to the right to fair and proper investigations.

#### **The Accused/1<sup>st</sup> Respondent's submissions.**

24. The accused filed the submissions dated 10/3/2025 and further submissions dated 17/3/2025.
25. The accused case is that the seized items are not relevant in the case and have also been omitted in the prosecution's inventory and list of exhibits.
26. The means of transactions between the applicant and the accused was not through the a laptop, his wife's laptop or the motor vehicle.
27. The charges relate to bank transactions mpesa and cash which exhibits have been supplied to the accused, the retained items amount to witch hunt and conspiracy with the investigating officers.
28. Lastly that the motor vehicle registration number is detained by the police and is wasting away to the accused detriment. That the vehicle has not been photographed or dusted for finger prints. That the respondent's action is malicious and a conspiracy with the applicant intended to deprive him means of transport.
29. The accused further submits that contrary to the applicant's claim, pretrial conference was conducted between 4/12/2024 and 10/2/2025 when the accused was supplied with documents and a hearing date was given.
30. The prosecution did not file submissions or respond to the application for revision.



## Analysis & Determination

31. I have considered the application for revision and the replying affidavit .Parties have also filed submissions on the application referring this court to the proceedings before the lower court . I find that only 2 issues are ripe for determination of the revision :

Whether the items were exhibits , whether the court had power to release the listed items .

32. Section 362 of the Criminal Procedure Code spells out the scope of revision in criminal cases as follows :-

“ The High court may call for and examine the record of any Criminal Proceedings before any subordinate court for purposes of satisfying itself as to the correctness , legality or propriety of any finding sentence or order recorded or passe and as to the regularity pf any proceeding of any such subordinate court “

33. The revisionary jurisdiction should be limited to amend errors and impropriety in subordinate court proceedings .It should not alter the discretion of the trial court over its own proceedings. Discretionary orders should be sparingly interfered and on grounds that the orders were fundamental breach of law and caused hardship.

34. In Dalmia Jain Airways Ltd. v Sukumar Mukherjee ,cited in Republic v Juma & 2 other Neutral citation: [2022] KEHC 365 (KLR) the Supreme court of India held that the jurisdiction

“ .... is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with an unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there is a grave miscarriage of justice or a grant violation of law calling for intervention, it is not for the High Court under Article 165 (6) of the Constitution to interfere.”

35. The trial court proceedings and the orders of the court issued on 6/2/2025 are on record. The orders were extracted and later authenticated pursuant to the accused prayer. However, the court’s written or typed ruling on the accused application dated 11/11/2024 is not on record.

36. From the record , the accused application for release of recovered items was opposed by No 79589 Cpl James Nzyoka ‘s affidavit sworn on 17/12/2024 on ground that the computers and mobile phones were the accused tools of trade and therefore contained relevant evidence in the case .The motor vehicle is suspected to be a proceed of crime and that records from NTSA confirmed that it was purchased on 5/6/2023 during the period of the offence when the accused had received a large sum from the applicant .

37. That the exhibits would only be released when investigations have been finalized.

38. The respondent attached the list of inventory of items recovered from the accused residence.



39. The investigating officer earlier filed Milimani Miscellenous Application No E114/2024 7/11/2024 seeking authorization to search phones and laptops belonging to the accused .The investigating officer listed 6 mobile phones to wit :

IPhone 15 Promax,Samsung Z Fold 4, Nokia Phone TA -1021 , Bontel Phone gold colour ,  
Huawei Phone JKM-LXI- Black Phone NE2210

40. He also listed 4 Laptops make HP ENVY, HP SRS Premim, Dell Black silver in colour , HP Elite Book silver in colour .

41. The investigating officer also sought to file a report on the findings of the search.

42. The police grounds for bringing the application for searching the digital devices was that the retrieved information was to be safely handled and relied on during the hearing.

43. The orders were granted by the court on 17/12/2024 in the Miscellenous application.

44. The accused application listed the mobile phones and laptops recovered during arrest which were also subjected to forensic and intended to be used during the hearing .

45. At the time of the application and the ruling of the court scheduled for ...the investigating officer had not filed his findings as intended in the application dated 7/11/2024.

46. I find that the court erroneously found that the listed items were not exhibits.Further error was committed when the court failed to give details of the findings and to resolve the disputed issues raised in the application and the police replying affidavit . See the case of *Jones Nzioka & another v Republic* [2020] eKLR where Nyakundi J held that a crucial issue to the resolution of issues between the parties ought to be founded on reasons in support or against the decision.

47. The judge referred to the decision of the House of Lords in *South Bucks District Council v Porter No 2* {2004} UKHL 33 1 WLR 1953 where it was stated that :

“ The reason for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues, disclosing how any issue of Law or fact was resolved. Reasons can be briefly stated, the degree of particularly required, depending entirely on the nature of the issues falling for decision.”

48. The accused argued that the items belonged to his family members, the Huawei Phone Model JKM - LXI- Black is said to belong to his househelp while the laptops are also claimed to belong to his spouse .

49. The Inventory of the prosecution’s intended exhibits lists a bulk of documentary evidence consisting of 19 almost 20 documents.Other documents would be served on results of two reports : cyber report , results from canadian embassy .

50. The cyber forensics report is still pending and is also related to the digital and computing devices recovered.

51. I find that it is /was premature to release the items at the Pre-Trial stage .

52. Section 121 of the *Criminal Procedure Code* provides as follows :-.

Detention of property seized



1. When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.
  2. if an appeal is made, or if a person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.
  3. If no appeal is made, or if no person is committed for trial, the court shall direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it otherwise.
53. This provision was explained in the case of *Republic v Juma & 2 other* Neutral citation: [2022] KEHC 365 (KLR) where Justice Mativo (as he then was) also explained the court’s power and limits in dealing with exhibits courts power over exhibits during trial at paragraph 17 and 18 that :
- “Its basic law that evidence seized for use as exhibits in criminal proceedings is generally held by the police or prosecuting authority until the time when it is formally introduced into evidence during the trial of an accused person. Such evidence is then considered to be custodia legis or in custody of the court until the final disposition of the case either by the lower court or where an appeal is preferred by the final appellate court. 18. The police are vested with powers to keep and protect exhibits to be produced in court. As was held in *Simon Okoth Odhiambo v Republic*, 9 exhibits should never be released by the court until it is satisfied that in the case of conviction, no appeal has been preferred and if the appeal has been filed such exhibits should only be released once the appeal has been heard and determined.”
54. The same position was held in the case of *Republic v Henry Were Obuya & another* [2006] eKLR where Serгон J held that:
- “...the Principal Magistrate therefore did not have jurisdiction to issue the orders releasing the container which in essence are the intended evidence in support of the prosecution’s case. The fact that the parties involved did not oppose the application for the release of the containers did not give the trial court any jurisdiction to issue to orders. In a nutshell the court had no control over the proposed exhibits until they are submitted to court as exhibits in evidence in the usual manner prescribed by law.”
55. The accused also urged that the retaining the items which are used in the course of his employment caused and /or continues to cause him loss and prejudice. Some items also belong to his wife. These arguments were not adduced during the hearing on 23/12/2024 in Miscellenous when the items were confiscated and taken for forensics .Further such grounds comprised of facts and required parties’ affidavits and proof to enable the court make appropriate orders.
56. The accused wife and his house help did not bring any claim to contest search and seizure by the police .
57. In the upshot, I find that the Trial Court did not have power to release the exhibits recovered during the arrest and further subjected to forensics investigations before they were produced in evidence during trial.
58. That the orders amounted to unconditional release of exhibits which was prejudicial to the criminal case and affected the administration justice which ought to be solemnly protected in the wider interests of the public.



59. The orders were in breach of procedure and were tainted by illegality warranting intervention by this court.
60. The application is allowed. The orders issued on are revised as follows:-
- a. The mobile phones and laptops listed in the Investigating officer's application dated 7<sup>th</sup> February 2025 search warrants and forensic examination shall remain in the custody of the Investigating Officer.
  - b. The matter shall be expedited to enable the police produce these exhibits during trial and further directions can be given on their release after production as exhibits in Court and photographs of the exhibits are placed on record.
  - c. The release of exhibits shall be subject to completion of investigations and trial depending on outcome shall aid trial Court on either forfeiture destruction of release of exhibits

### **Release of motor vehicle**

61. Section 177 & 178 of CPC allows a Court release or restitute property. However, this Court notes that the trial is not over yet but only the Pre-trial was completed. The Trial Court cannot anticipate the evidence to be preferred adduced and presented in Court. The law allows opportunity at appropriate stage and with reasons made to the Trial Court to allow or deny amendment of charges. Therefore although the subject motor vehicle is said to be a proceed of crime allegedly bought during the transactions between the accused and the complainant and the accused answered to the charge of obtaining money by false pretenses brought under the Penal Code; No one can tell the unfolding events in the Trial even though the charges dealing that the proceeds of crime are not before the Trial Court at this stage and the investigating officer has not testified yet to confirm any nexus or not between the subject motor vehicle and case before the court. Purchase Payment and Ownership of the motor vehicle Reg KDM 279R Land Rover Discovery shall first be confirmed before the Trial Court before order of motor vehicle is released on merit during or after trial.
62. The subject motor vehicle should not be released forthwith. It is premature at this stage before Trial.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT AT CRIMINAL DIVISION  
NAIROBI PHYSICALLY/VIRTUALLY ON THIS 8/4 /2025**

**M.W.MUIGAI**

**JUDGE**

In the presence of

Mr. Nandwa

Mr. Minai with Minai

Mr. Mwendawiro for ODPP

