



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chweya v DCIO Eldoret Police Station & 2 others (Miscellaneous Criminal Application E029 of 2023) [2025] KEHC 8653 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8653 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2023**

**JRA WANANDA, J**

**JUNE 20, 2025**

**BETWEEN**

**BERNARD MORANGA CHWEYA ..... APPLICANT**

**AND**

**THE DCIO ELDORET POLICE STATION ..... 1<sup>ST</sup> RESPONDENT**

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

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION – UASIN GISHU  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect to the Applicant's Notice of Motion dated 15/05/2023, and filed through Messrs Gichaba Ondieki & Co. Advocates. It sought orders as follows:
  - a. That this Application be certified extremely urgent and its service be dispensed with in the 1<sup>st</sup> instance.
  - b. That pending the inter partes hearing of this Application, the Honourable Court be pleased to grant the Applicant anticipatory bail pending arrest or charge on such terms the Court may deem fit and just to impose.
  - c. That the Honourable Court be pleased to issue a conservatory order restraining the Respondents, their servants, agents, junior officers and/or anybody from effecting and/or anybody from arresting, harassing, intimidating or otherwise however interfering with the Applicant herein pending the inter partes hearing of this Application.
  - d. That the Honourable Court be pleased to direct and/or order the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to forthwith reconstitute all the Applicant's shop goods and Kshs. 550,000 carted away from the Applicant's business premises on 9.5.2023 in the absence of the Applicant.



- e. That the Honourable Court be pleased to issue any other order that it may deem just to grant in the circumstances.
  - f. That the costs of this Application be provided for.
2. The Application is premised on the grounds appearing on the face thereof and the Supporting Affidavit sworn by the Applicant. In his Affidavit, the Applicant deponed that he is a resident of Kamukunji estate of Uasin Gishu County where he carries out various businesses to wit, retail shop, selling of cooking gas, electronics, phone charging and its accessories, and super Mpesa agency. He deponed that sometime in 2018, the Respondents maliciously charged him in Eldoret Chief Magistrates' Criminal Case No. 1895 of 2018, which was subsequently, consolidated with another case. He deponed that he was kept in police cells for a longer period than the law permits upon which he filed High Court in Eldoret High Court Constitutional Petition No. 31 of 2019 and that in Criminal Case No. 1895 of 2018, he was acquitted under Section 210 of the *Criminal Procedure Code*. He stated that in the said case, there was a motor vehicle Reg. No. KCA 914V which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have refused to release despite the conclusion of the case, that upon his instructions, his Counsel delivered a letter to the OCS to release the motor vehicle but consequently, an Officer from the DCIO's office by the name Moha Hussein started threatening him on calls, informing him that he would face dire consequences if he did not give him money, and that the Officer even vowed to shoot the Applicant.
  3. He deponed further that on 8/05/2023, he went to attend a burial of a relative in Kisii and he securely locked his business premises containing a sum of Kshs 550,000/- both in notes and coins, cylinders, mobile phones, television sets and other shop goods, personal items and records therein, that on 09/05/2023, his mobile phone went off due to low charge and he did not have its charger, so it remained off for the better part of that day and that on 10/05/2023, he learnt that the 1<sup>st</sup> Respondent's officers went to his business premises, broke into it and carted away all his business stock, money, records and were threatening to arrest him for no apparent reason. Urging that he has a right to own property' and liberty and freedom of movement is guaranteed by *the Constitution*, he prayed the Court orders that he be granted anticipatory bail on any condition that the Court will impose. He offered to co-operate with the 1<sup>st</sup> Respondent and attend to the 1<sup>st</sup> Respondent's office whenever required to do so while on bail. He further deponed that during the illegal breaking into his business premises, several members of the public recorded the breaking both on videos and still images, copies of which he attached to the Application and prayed that the Court directs that all his goods carted away be restituted to enable him continue with his business. He urged the Court to issue a conservatory order restraining the Respondents from harassing him and taking him into custody. In conclusion, he urged that the current alleged investigation is solely aimed at settling scores in relation to the said Criminal Case No. 1895 of 2018.
  4. The Respondents, in opposition to the Application, filed the Replying Affidavit sworn by Police Constable James Nyagemi, filed through the office of the Deputy Public Prosecutions (ODPP) in which he deponed that he is the Investigating Officer in this matter. He deponed that the offices of the Respondents are under the mandate of the National Police Service, and whose functions include collecting and providing criminal intelligence, undertaking investigations of crimes, maintenance of law and order, and apprehension of offenders among others. He stated that on 09/05/2023, police officers from DCI Eldoret West received a tip-off that there was a motor vehicle carrying illicit brew and had offloaded the same at a shop in Kamukunji area belonging to the Applicant. He stated that after receiving this information, police officers (including himself) proceeded to the scene to confirm the report, that some officers moved to the shop on foot while he remained behind with a colleague, waiting for a police vehicle, that the officers arrived at the shop's entrance and introduced themselves to the Applicant but the Applicant, instead of co-operating, rushed to the door and tried to close it



but one of the police officers managed to gain entry and that the Applicant became wild and started inciting residents against his arrest. He deponed further that the Applicant also snatched a mobile phone belonging to one PC Ali Osman who was involved in the operation while he was calling for reinforcement, that this was captured in the investigation diary vide OB No. 117/09/05/2023, and that due to the Applicant's incitement, members of the public who had gathered outside his shop helped him to escape after locking the shop.

5. He stated that he and his colleague proceeded to the shop and called for reinforcement and a team of other police officers from DCI Eldoret West and Uasin Gishu County Commander's office arrived shortly thereafter and tried to reach the Applicant but he was unreachable, that upon a decision made by the County Police Commander, the shop was broken into so as to recover exhibits before they were tampered with by the Applicant and/or his agents, and that the shop was broken into in the presence of one Jared Nyandoro who introduced himself as the Applicant's uncle. He deponed further that they managed to recover assorted brands of alcohol with labels bearing "UNBS (Uganda)" standardization marks, assorted brands of cigarettes with "Supermatch" brand labelled "for export", suspected stolen electronics and other items. According to him, also recovered was cash (Kshs 370,145/-) of different denominations, that the items were loaded into a police vehicle and transported to the Eldoret police station where an inventory of the recovered items was prepared under the watch of the said Mr. Jared Nyandoro and one Mr. Nathan Oburu, an Advocate who was acting for the Applicant. He urged that it was impossible to prepare the inventory at the Applicant's shop because of the hostile environment caused by the Applicant's act of inciting members of the public against the police.
6. He deponed further that the operation was recorded in the Investigation Diary as a late entry Report vide OB No. 72/10/05/2023, that investigations have been concluded and the police file was forwarded to the 3<sup>rd</sup> Respondent who has since recommended that the Applicant be charged with various offences under the East Africa Community Custom Management Act 2004, The Standards Act, The Proceeds of Crime and Anti-Money Laundering Act 2009 and the Penal Code. He also deponed that all the items recovered from the Applicant's shop are exhibits that will be relied on during the trial against the Applicant, that the money (Kshs 370,145/-) that was recovered from the Applicant's shop will be treated as proceeds of crime which may be forfeited to the State at the end of the trial, that they have accounted for everything that was recovered from the shop and that the recovery and subsequent investigations was conducted in accordance with the law, and was not motivated by malice or to settle scores as alleged by the Applicant. Regarding Eldoret MCCR 1895 of 2018, he agreed that it is true that the Applicant was charged in the said case and was acquitted. He however contended that the case is not related to the present one and that it should be determined on its own merit. He denied the allegations contained in the Applicant's Affidavit, terming them unfounded as no evidence has been availed to prove the same and aimed at tainting the image of officers working under the 1<sup>st</sup> Respondent. He denied that the Applicant was not present when the police first arrived at his shop and reiterated that the Applicant was present but managed to escape after inciting members of public against the officers. According to him, the Application is an afterthought, misconceived, unfounded in law, frivolous and a gross abuse of the Court process.
7. Mr. Ondieki appeared as Counsel for the Applicant while Prosecution Counsel Mr. Okaka appeared for the State, having taken over from Ms. Okok.
8. Although I granted the parties leave to file written Submissions, neither seems to have filed such Submissions. I have not come across any Submissions either in the physical file or as filed through the Judiciary Case Tracking System (CTS) online platform.



## Determination

9. I note that prayer (b) and (c) of the Application, seeking that the Applicant be granted anticipatory bail, and restraining of the Respondent from arresting the Applicant, respectively, were only sought “pending the hearing and determination of this Application”. The parties having entered into a consent on 15/06/2023 whereof an interim conservatory order was agreed upon restraining the Respondents from arresting the Appellant, pending hearing and determination of the Application, prayers (b) and (c) aforesaid are now evidently spent.
10. I also note that although the Applicant, in his Supporting Affidavit, alleged that a motor vehicle Reg. No. KCA 914V seized in respect to Eldoret Chief Magistrates’ Criminal Case No. 1895 of 2018, in which he was acquitted, has to date not been released to him despite the acquittal in the case, he has made no prayer thereon in the Application.
11. The only substantive issue that therefore remains is; “whether this Court should order the Respondent to release the items, including cash, confiscated from the Applicants’ shop”.
12. In his Replying Affidavit, the deponent, PC James Nyagemi has given an elaborate account of the case the subject herein. He gave a chronology of events starting from 9/03/2023 when, he deponed, the police received a tip-off of alleged illicit merchandise being off-loaded at the Applicant’s shop, how the police proceeded to the scene and how they were however obstructed by the Applicant who allegedly locked the door to the premises, turned wild, and incited members of the public against the police officers who, attracted by the commotion, got involved and in the process, the Applicant escaped off. He also recounted how the police then, in the presence of one Jared Nyandoro, who allegedly introduced himself as an uncle of the Applicant, broke into the Appellant’s shop in which they recovered assorted brands of alcohol bearing Ugandan standardization marks, assorted brands of cigarettes labelled “for export”, suspected stolen electronic items, and also cash totalling Kshs 370,145/- of different denominations. According to PC Nyagemi, these items were moved to the Eldoret Police Station where an inventory was prepared in the presence of the Applicant’s said uncle and also in the presence of the Applicant’s Advocate, Mr. Oburu. A copy of the inventory, and also a copy of the Occurrence Book (OB) Report have indeed been produced. I note that the inventory is indeed signed by the said Mr. Nathan Oburu Advocate, and also Jared Nyandoro as witnesses, as alleged by PC Nyagemi
13. PC Nyagemi also deponed further that investigations were concluded and the police file forwarded to the ODPP which office agreed with the police findings and permitted prosecution of the Applicant for offences committed under various pieces of legislation. In the end, he deponed that all the items recovered are to be used as exhibits in the intended criminal case against the Applicant.
14. The Applicant did not seek leave to file a Supplementary Affidavit to controvert the above allegations made by PC Nyagemi. Considering the damning nature of the allegations, I would have expected the Applicant, if the allegations were untrue, to have moved with speed to challenge or contradict the same and the only way to have sought to do so would have been by way of swearing a Supplementary Affidavit. Since the Applicant did not pursue this option available to him, the contents of PC Nyagemi’s Affidavit remain uncontroverted.
15. In the circumstances, I have no material before me to justify disbelieving the Respondent’s submission that the items confiscated are exhibits to be used in the intended criminal trial against the Applicant and I therefore accept the contention. It will therefore be premature to order for release of the items before the same are produced as exhibits. It shall thereafter be for the trial Court to make a determination whether to order for release thereof.



16. Regarding the amount of money confiscated from the Applicant's shop, while the Applicant claims it was a sum of Kshs 550,000/-, the Respondent puts the same at Kshs 370,145/-. I believe the unravelling of this discrepancy is a matter that can be unlocked through an inquiry that can be ordered by the trial Court. It is therefore not for this Court to rule on that.
17. Regarding Eldoret MCCR 1895 of 2018, PC Nyagemi agreed that it is true the Applicant was charged in the said case and was acquitted. He however urged that the said case is not related to the present one. Looking at the Charge Sheet that was the basis of the said Eldoret MCCR 1895 of 2018, I note that the Applicant was charged (together with a second person) with the offence of "importing alcoholic drinks that does not conform to the requirements of the Alcoholic Drinks Act ....". The offence is then indicated to have been committed on 7/05/2018. It is therefore true that the alleged offence therein and for which the Applicant was acquitted, sounds similar to the present one. However, the present offence is alleged to have been committed on 9/05/2023, 5 years later. It is therefore clear that the particulars of the alleged current offence are different from the one in Eldoret MCCR 1895 of 2018 in which the Applicant was acquitted.
18. The upshot of the foregoing is that the Application is dismissed with costs to the Respondents.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 20<sup>TH</sup> DAY OF JUNE 2025**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

N/A for the Applicant

Ms. Muriithi for the State

C/A: Edwin Lotieng

