



**Gitau & 2 others v Office of the Director of Public Prosecution & 2 others  
(Criminal Appeal E010 of 2025) [2025] KEHC 8756 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8756 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL APPEAL E010 OF 2025  
HI ONG'UDI, J  
JUNE 19, 2025**

**BETWEEN**

**PETER GITAU ..... 1<sup>ST</sup> APPELLANT  
VINCENT KIBAGENDI ..... 2<sup>ND</sup> APPELLANT  
MARY MUGURE ..... 3<sup>RD</sup> APPELLANT**

**AND**

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION .. 1<sup>ST</sup> RESPONDENT  
OCS NAKURU CENTRAL POLICE STATION ..... 2<sup>ND</sup> RESPONDENT  
KENYA REVENUE AUTHORITY, NAKURU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Peter Gitau, Vincent Kibagendi and Mary Mugure hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> appellants/ applicants filed the Notice of Motion dated 31<sup>st</sup> January, 2025 against the office of the director public prosecution (ODPP), the officer commanding Nakuru Central Police Station (OCS) and Kenya Revenue Authority Nakuru hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents seeking the following orders:
  - i. Spent
  - ii. That this honourable court be pleased to review, vary, set aside the ruling in CMCR 2315 O.S. 2024 Republic V Peter Gitau & 2 others.
  - iii. That this honourable court be pleased to order the release of the Plastic Molding Machine, files and official documents, ETR machine, chiller machine, hot runner machine, soap making machine, oil drum, weigh scale, assorted machine spare parts, plastic chemicals, detergents



chemicals and raw materials which are all being held by the 3<sup>rd</sup> Respondent at a warehouse in Blankets area.

- iv. That the 3<sup>rd</sup> respondent through the 2<sup>nd</sup> respondent be compelled to bring the Plastic Molding Machine, files and official documents, ETR machine, chiller machine, hot runner machine, soap making machine, oil drum, weigh scale, assorted machine spare parts, plastic chemicals, detergents chemicals and raw materials before this honourable court to ascertain that they are in good working condition before the same are released to the Applicants.
  - v. That the 2<sup>nd</sup> and 3<sup>rd</sup> respondent be compelled to re-open the Applicants' business premises located at Industrial area
  - vi. That the costs of this Application be provided for
2. The application is premised on the grounds on its face and the sworn affidavit of the 1<sup>st</sup> appellant/applicant. The main ground is that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents on 9<sup>th</sup> October, 2024 at 1400hrs raided the Avansere Ltd where the 1<sup>st</sup> appellant/applicant serves as a director. Further that in the process of the said raid the 2<sup>nd</sup> and 3<sup>rd</sup> respondents took away the appellants/applicants' tools of trade in the disguise of conducting investigations. The said items are indicated in prayers 3 & 4 of the notice of motion.
  3. The respondent filed a response through the replying affidavit of one Daniel Okello an appointed officer serving as a supervisor attached to the Investigations and Enforcement department of Kenya Revenue Authority. He gave a detailed account of the happenings in this case, the reason for the seizure of the items, the investigations conducted and the results thereof.
  4. He further averred that the release of the goods and equipment will hamper the prosecution case as the same are liable for forfeiture if the applicants are convicted in line with section 39(6) of the Exise Duty Act, 2015. Further that the release of the goods and equipment will not only render any forfeiture proceedings futile but also jeopardize the ongoing criminal proceedings where the goods and equipment are intended exhibits.
  5. He deponed that the law under section 121 of the Criminal Procedure Code permits the continued detention of the seized items.
  6. The application was argued orally by counsel. M/s Kemunto for the appellants/applicants submitted that they sought release of the plastic moulding machine among others as sought in prayer 3 of the notice of motion. That the application is based on Article 50(2) of the Constitution. She added that the charges against the 2<sup>nd</sup> and 3<sup>rd</sup> appellants/applicants were withdrawn.
  7. It is her contention that in view of the withdrawal there is no need to continue withholding the plastic moulding machine. She referred to the case of Algare D Ltd V Kenya Revenue Authority eKLR 2021, in support of her submissions.
  8. M/s Njuguna for the 3<sup>rd</sup> respondent submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondent's officer while acting on intelligence went to the premises in question and took possession of all the recovered items which are exhibits in the Chief Magistrate's Criminal Case No. E2315/2024. The charge is manufacturing without a license and the items are yet to be produced. That their release at this point will prejudice the prosecution case. She said the seizure of the goods was covered by Regulation 32 of the Excise of Goods Act.
  9. M/s Okok for the 1<sup>st</sup> & 2<sup>nd</sup> respondents fully associated herself with M/s Njuguna's submissions



### **Analysis & determination**

10. Before this court is a Memorandum of Appeal dated 28<sup>th</sup> January, 2025 challenging the ruling by Hon. L. Akoth dated 11<sup>th</sup> December, 2024. The Ruling was issued in MCCR/E2315/2024 where the appellants/applicants had filed a similar application like what is before this court. The trial court declined to order for the release of the said items.
11. Aggrieved by the said Ruling the appellants/applicants filed the present Appeal seeking to have the contested items released to them before the court hears the Appeal to determine whether or not the trial Magistrate erred. Issuing any orders of release of the contested items before their production vide the present application would be interpreted to mean that this court has already found that the seizure of the items was wrongful and that the Appeal is already determined through this application, which is not acceptable.
12. Secondly the prosecution should be given an opportunity to present its case before the trial court and if there are any exhibits which should not be produced, it's the trial court which after hearing the witnesses would be best placed to know whether the said exhibits ought to be produced or not.
13. The upshot is that I find no merit in the Notice of Motion dated 31<sup>st</sup> January, 2025 which I hereby dismiss.
14. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 19<sup>TH</sup> DAY OF JUNE, 2025 IN OPEN COURT AT NAKURU**

**H. I. ONG'UDI**

**JUDGE**

