



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karuti v Lemaisiaku & 4 others (Civil Case E010 of 2023)  
[2025] KEHC 8793 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL CASE E010 OF 2023  
HM NYAGA, J  
JUNE 19, 2025**

**BETWEEN**

**NAHASHON KARUTI ..... PLAINTIFF**

**AND**

**JONES LEMAIIAKU ..... 1<sup>ST</sup> DEFENDANT**

**SAFARICOM LTD ..... 2<sup>ND</sup> DEFENDANT**

**ABDI AHMED ..... 3<sup>RD</sup> DEFENDANT**

**THE IG OF POLICE ..... 4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**Background**

1. By a plaintiff dated 11<sup>th</sup> October, 2023, the plaintiff/applicant sought judgment against the defendant jointly and severally for:-
  - a. General damages against the 1<sup>st</sup> defendant for assault and trespass to the person of the plaintiff.
  - b. General damages for emotional psychological distress and breach of constitutional rights.
  - c. Aggravated and exemplary damages.
  - d. Costs of the suit any other order the honourable court may deem just and fit to grant.
2. The plaintiff's case is that on 20<sup>th</sup> September, 2022, he was going about his business in the 2<sup>nd</sup> defendant's customer care shop - Meru town, when the 1<sup>st</sup> defendant, while acting as a servant and/or agent of the 2<sup>nd</sup> and/or the 4<sup>th</sup> defendant, without any lawful excuse, violently and viciously attacked



- him. That, further, the 1<sup>st</sup> defendant without lawful excuse threatened the plaintiff by telling him that he carried a firearm and he intended to shoot the plaintiff.
3. The plaintiff further avers that he made a report over the incident at Meru Police Station on 23<sup>rd</sup> September 2022. That the 3<sup>rd</sup> defendant was assigned the case to investigate. That the 3<sup>rd</sup> defendant, in breach of the duty bestowed upon him, purposefully and willfully falsified and distorted official police records for the purpose of avoiding to charge and prosecute the 1<sup>st</sup> defendant, and then prosecuted the plaintiff for a tramped-up charge.
  4. All the defendants filed their defence denying the allegations by the plaintiff. The 3<sup>rd</sup> and 4<sup>th</sup> defendant also filed a counter-claim against the plaintiff.
  5. Directions were taken under Order 11 of the civil Procedure Rules and the suit was set down for hearing.

### **The Application**

6. By a notice of motion dated 25<sup>th</sup> November, 2024, the plaintiff /applicant sought this following prayers:-
  - a. Spent
  - b. That the Honourable court be pleased to make the order that the 2<sup>nd</sup> respondent/2<sup>n</sup> defendant in the case do avail the CCTV footage and or coverage of floor activities and situation of its Customer Care shop or centre situate at Njuri Ncheke Street during the time of 17:30Hrs to 18:00hrs on 20/9/2022 or more particularly the time relevant to the incident which gave rise to this case.
  - c. That the said CCTV footage and coverage be taken and be preserved as evidence on behalf of the plaintiff in this case.
  - d. That the costs of this application be in the cause.
7. The gist of the application is that the incident in question took place inside the 2<sup>nd</sup> defendant's premises and that there are CCTV cameras in place. That despite several visits and requests to the 2<sup>nd</sup> defendant, it has declined to avail the CCTV footage for the material date. That the CCTV footage will bring essential facts relevant to the case and a just determination of the matter.
8. The application was opposed by the 2<sup>nd</sup> defendant. Its position was that although it has CCTV cameras in place, it only stores footage for up to 90 days. That it had never been served with any requests by the applicant as alleged. That the matter is past the pre-trial stage where the applicant could have made the application.
9. Parties have filed submissions which I have considered and will where necessary refer to them.

### **Analysis and Determination**

10. As I had stated earlier, the matter underwent the pre-trial procedures and the matter was confirmed for hearing. During the pre-trial, the applicant never sought the CCTV footage. The applicant has moved the court almost 26 months after the alleged incident.
11. The 2<sup>nd</sup> defendant has stated that it only stores CCTV data for 90 days. That explanation is reasonable and is in line with common practice, with the knowledge that CCTV footage storage cannot be kept forever, unless timely request to that effect is made. It is quite common for a CCTV device to store data for a number of days and then due to space, do away with the same or overwrite the new data upon it.



12. The applicant never made the request at the pre-trial stage. These are issues that are specifically meant to be addressed at that pre-trial stage. What the applicant is seeking is after confirming the suit for hearing he now wants to go back to that pre-trial stage.
13. Court orders are not issued in vain. I think that this is a clear case where such orders as those sought will be in vain, not because of reluctance by the 2<sup>nd</sup> defendant, but its inability to comply with the same.
14. Therefore, I find that the application is made too late in the day and it is dismissed with costs, to be in the cause.

**DATED, SIGNED & DELIVERED AT MERU THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**H.M. NYAGA**

**JUDGE**

