



**Wakukha v Director of Public Prosecutions (Criminal Case E030 of 2023)
[2025] KEHC 10728 (KLR) (Crim) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E030 OF 2023
MW MUIGAI, J
JULY 23, 2025**

BETWEEN

JESSE WAFULA WAKUKHA ACCUSED

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

Background

1. The Accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars re that on the night of 18th & 19th march, 2023 at unknown place within Makadara Sub-County, within Nairobi County jointly with others not before Court murdered June Jerop Kangongo.

Application

3. The OCS Kilimani Police Station release motor vehicle registration No. KCN688K black in colour and KCL002C black in colour be released to the Applicant.
4. The Court issue an order allowing the Respondent lee-way to take any photographs or further evidence to be used in any future proceedings.
5. The applicant herein is suffering irreparable harm as the motor vehicle depreciates at the hands of the police officers. The said motor vehicles are in danger of depreciating since it stands unused and is still a financial liability to the applicant who is still paying for it.
6. If the vehicles are released after the photographs are taken, no miscarriage of justice will be occasioned during the trial. He is still presumed innocent until proven guilty.



7. The applicant is ready and willing to abide by any conditions to be set by the court prior to the release of the subject motor vehicle including producing it in court whenever required and to deposit the original log book in court pending the determination of the case.
8. The officers investigating this matter confiscated motor vehicle Reg. No. KCN688K which is registered in the name of the Applicant's wife Brenda Khanakhae Wakili and Reg. KCL002C registered in favor of the applicant's Company Trittech Communications Limited.
9. The motor vehicles are currently being held at the Makadara Police station. The motor vehicles are relatively brand new and was used by the Applicant's wife in the course of her daily life including going to work, dropping off her kids at their school and other activities all together.
10. The applicant herein is suffering irreparable harm as the motor vehicle depreciates at the hands of the police officers. The said motor vehicles are in danger of depreciating since it stands unused and is still a financial liability to the applicant who is still paying for it.

Supporting Affidavit of Jesse Wafula Wakukha

11. In the cause of investigations, the Officers investigating this matter confiscated motor vehicle Reg. No. KCN688K which is registered in favor of his company Trittech Communications Limited.

Replying Affidavit in Response to Supporting Affidavit of the Applicant of 29th October 2024

12. IP Charles Jackson of DCI Makadara Sub -County HQ one of the Investigators in this matter, confirmed that M/vehicles Reg. No. KCN688K which is registered in the name of the Applicant's wife Brenda Wakoli and Reg. KCL002C registered in in the Applicant's Company Trittech Communications Limited were confiscated during investigations.
13. The ownership of Motor vehicle Reg KCL 002C, the Sale Agreement tends to differ as it indicates that the deceased in this case June Kangongo purchased the motor vehicle KCL 002C which is supported by the Seller's Witness Mr. Julius Muthomi and the Applicant signed as a witness in the sale agreement during the purchase of the motor vehicle.
14. The Motor Vehicle Reg KCN 688K also held at DCI Makadara Sub County is considered as exhibit by the Respondent from investigations. Blood samples were collected from the Motor Vehicle taken Reg KCN 688K and were taken to Government Chemist for analysis and hence the Motor vehicle is an Exhibit.

Replying Affidavit by Sister of Deceased to Oppose the Application for Release of Motor Vehicle (s)

15. Joyce Jepkemboi Kangongo is holder of Special Grant of Letters of administration of the estate of late June Jerop Kanguongo in CM CT Succession Cause No E129 of 2024.
16. The motor vehicle KCL 002C was purchased by the June Jerop Kanguongo (deceased) from Auto pedia Enterprise Ltd on 8/6/2022 at Ksh2,250,000/- and attached copy of Sale Agreement

Applicant's Written Submissions

17. We rely on the case of Katwai vs. Republic (MISCCR.APP No. 305/2023) [2024] KEHC 4021 (KLR) (Crim) (22 April, 2024) court held that;

“ That photographs can be taken and used as an exhibit if the driver is arrested,”



18. The detention under S. 24(e) and (g) of the NPS Act (Cap 84) and under any provision of the law including S.121 of the CPC, the Court is enjoined to facilitate seizure and detention is not meant to be for an indefinite period but only for purpose of investigations.
19. Article 40 of *the Constitution* protects a person's right to property.
20. The court in *Katwai vs. Republic* (MSCR.APP.305/2023) [2024] KEHC 4021 (KLR) (Crim) (22 April, 2024) further stated that;

“----the detention is a gross violation of his constitutional right to own property under Article 40(1) and no public interest is served.”

DPP Submissions in Response to the Application for Release of Motor Vehicles Marked as Exhibits

21. The motor vehicles are key exhibits in the serious offence of murder. Releasing them risks loss, tampering or contamination of potentially crucial evidence as KCN 688K is being treated as the scene of the crime.(custodia legis or in custody of the court)

Risk of compromising the integrity of evidence:

22. Once released, its evidentiary value may be irreparably compromised. Forensic evidence like blood samples collected from KCN 688K could be lost, cleaned or altered. The case of *Simon Okoth Odhiambo vs. Republic* [2005] eKLR

‘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’

Public Interest and the Gravity of the Offence outweigh proprietary Interest

23. Article 24 of *the Constitution* allows the limitation of rights (including property rights under Article 40) in the interest of public safety and administration of justice. Allowing the release of the motor vehicles at this stage would significantly prejudice the integrity of the prosecution's case.
24. We pray that the court reject the application for release of the two (2) motor vehicles registered KCN688K and KCL002C and direct that the said vehicles remain in lawful police custody until the conclusion of the trial or further orders of this court.

Submissions by Victim's Family

24. The background upon which the Application is opposed is primarily premised in the ownership of motor vehicle KCL 002C, demonstrated as vested in the name of June Kangogo (deceased).
25. The sale agreement produced as annexure JJK-2 is that the subject vehicle KCL 002 was purchased in the name of the deceased (June Kangogo).
26. Section 121 CPC vests the trial Court with discretion in considering whether or not to release any property so seized pending conclusion of a trial; which discretion, we submit, must be exercised judiciously.
27. However, section 121 (1) it is only when the property so seized has been produced as an exhibit in court that the court is then seized with the jurisdiction to order for its disposal.



28. In exercising the judicial discretion bestowed, in the totality of the lack of corroboration by the Accused Person/Applicant, when viewed from the prism of the confirmation of ownership in the subject vehicle KCL 002C in the deceased June Kangogo, the subject vehicle cannot then be available for release to the Accused Person/Applicant.
29. If anything, we submit, the vehicle KCL 002C, whose ownership has been admitted by the Applicant as vesting in the deceased, should be released to the Victim's estate for appropriate administration as is by law permitted.

Analysis & Determination

30. The issue for determination is whether the motor vehicles Reg. No. KCN688K and Reg. KCL002C should be released to the Applicant.
31. The uncontested facts are that the matter in Court arises from conduct of investigations by Law Enforcement Officers /Police Officers from a incident death reported at Industrial Area Police Station vide OB No 50/21/03/2023.
32. The Police derive their legal mandate from Article 244& 245 of *the Constitution*; Section 24 of *National Police Service Act* 2011 on functions of Police Officers & Section 26(1) (c) of CPC; the Police may exercise the power to detain and search aircraft, vessels, vehicles and persons Section 118 Power to issue search warrant (if need be and obtain Court order) & Section 121 of CPC 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.
33. The matter under investigation is pending hearing and ODPP/I/O deposed and submitted the Reg. No. KCN688K is an exhibit in the pending trial and Reg. KCL002C purchase possession registration & ownership re contested in this Court and pending Succession Cause in another Court.

Katwai vs. Republic 2024 eKLR

On whether the prosecution would be prejudiced, the applicant submits that detaining the vehicle where the suspect is not arrested would be a great miscarriage of justice, it is used to repay the car loan and to maintain the vehicle.

That tracing and arresting the suspect may take long while the vehicle would be deteriorating and losing value and also exposed to depreciation despite being fairly new.

That the applicant is willing to produce the vehicle as and when required and that the vehicle cannot be treated as a vessel of crime until a competent court finds so. That even if the suspect is apprehended and charged the suspect remains innocent until proven guilty.

That the court would need to issue a notice to show cause to the owners of the vehicle before it is forfeited, this would be the appropriate time to detain the vehicle.

Finally, the applicant submits that the car hire agreement was produced before the court as evidence that he had hired the vehicle to Douglas Itila and that the applicant and the registered owner are not suspects in the commission of crime.

Republic vs Juma & 2 Others [2022] eKLR

The applicant states that it objected to release of the said motor vehicle on grounds that it was an exhibit in criminal case number E979 of 2021 and it was yet to be identified and produced, but in a ruling delivered on 26th August 2021 the trial court allowed the release of the said motor vehicle.....



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.

34. Republic vs Everlyne Wamuyu Ngumo Criminal Revision 138 of 2016; it was held;

In the instant case, the motor vehicle was ordered released to the accused so: “That the accused do have physical possession of m/v Reg No. KCD 112C to save it from the wear and tear due to immobilization of the engine.” In the light of what I have stated in the foregoing paragraphs, I find that the trial court did not have jurisdiction to order the release of the subject motor vehicle to the accused, given that the prosecution intended to use it in proving their case against the accused person.

35. The Applicant’s concern is that the Motor vehicles continue to depreciate and non- use is inconveniencing family transport. The Applicant proposes the early release and photographs are taken and used during Trial. The Applicant is ready and willing to abide by any conditions imposed.

36. The case-law outlined above points to release of motor vehicle detained with ongoing investigations and suspect(s) still at large with no contest to ownership the vehicle is released to the registered owner and when suspect is/are arraigned and the vehicle is required the owner shall present it to Court.

37. However, where admittedly the vehicle(s) are exhibit(s) in a trial and/or where there is ownership dispute as in the instant case, the release is subject to production of the vehicle as exhibit and thereafter, on application the vehicle maybe released and photographs taken and used during rest of trial.

38. This Court finds that at the inception stage it is important that the Court is cautious as it is not amenable to the full circumstances of the matter pending trial until or during trial.

At this preliminary stage the Court will only err on the side of caution maintain status quo as the vehicle (s) have not been presented produced as exhibits and subject to examination by all relevant and legal parties to trial, thereafter, the Applicant’s request maybe considered on merit, release of the vehicle(s) upon production in Court and grant release and replace with Photographs after production as exhibit in Court.

At this stage this Court cannot release what has not been presented as exhibit in Court. The Application at this stage is premature should await commencement of Trial.

39. Therefore, cumulatively from the above outline of pleaded facts and legal provisions and case-law, the application for release of motor vehicles Reg Reg. No. KCN688K and Reg. KCL002C is premature as trial has not commenced.

Once Trial starts the issue maybe revisited and addressed on merit once the exhibit(s) is/re presented in Court.

RULING DELIVERED SIGNED & DATED IN OPEN COURT IN CRIMINAL DIVISION AT NAIROBI ON 23/7/2025 VIRTUALLY/PHYSICALLY.

M.W. MUIGAI

JUDGE

