



REPUBLIC OF KENYA



**Chirac Enterprises Limited v Republic & 2 others (Criminal Revision
E026 of 2023) [2024] KEHC 1215 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E026 OF 2023
PM MULWA, J
FEBRUARY 9, 2024**

BETWEEN

CHIRAC ENTERPRISES LIMITED APPLICANT

AND

REPUBLIC 1ST RESPONDENT

JON MBOGUA NJOROGE 2ND RESPONDENT

NANCY WAMBUI GACHOKI 3RD RESPONDENT

RULING

1. This is a Criminal Revision application arising from proceedings in Kiambu Criminal Case No. E861 of 2022. In that case Nancy Wambui Gachoki was charged with the offence of stealing by agent contrary to Section 283 (b) of the *Penal Code*. It was alleged that the accused stole the complainant's motor vehicle registration No. KDH 208Q make Mercedes Benz ML 350 valued at Kshs. 6 million which had been entrusted to her.
2. During the pendency of the trial in the lower court, and in order to preserve the subject motor vehicle, parties consented on how the motor vehicle was to be managed and/or handled.
3. Later, the 2nd respondent successfully applied to have the consent order reviewed/varied in his favour; that the subject vehicle be released to him and the log book be deposited in court. It is that order of variation which has prompted the revision application.
4. The application, which was made by way of a Notice of Motion dated 21st February, 2013, is predicated on article 165 (6) & (7) of the *Constitution* and Sections 362 and 364 of the *Criminal Procedure Code*.
5. The applicant Chiral Enterprises Ltd, has sought to have the orders made by the trial court on February 14, 2023 stayed as the same have the effect of divesting the ownership of the motor vehicle from it and yet it is the registered owner thereof.



6. The application is supported by the supporting affidavit of Janeth Jeruto Cheum sworn on 21st February 2023 and which I have considered.
7. The application was served but no response was filed. Directions were given that parties file and exchange written submissions. Only the applicant filed written submissions dated 30/5/2023.
8. This Court's revisionary jurisdiction is provided for in Article 165 of the Constitution as read with Sections 362 and 364 of the Criminal Procedure Code. The Court has power to give any order or direction so long as such order or direction is appropriate in the administration of justice.
9. The safeguards for revising or varying an order of the subordinate court by this court are well settled, that is, only where there is established an illegality, incorrectness, impropriety and irregularity.
10. Having perused the lower court record and having considered the application, the supporting affidavit and the filed submissions, the issue for determination is whether the court should set aside the order by the learned trial magistrate made on 14/2/2023.
11. Without going into the merits of the criminal trial in the lower court, this is a matter which basically revolves around disputed settlement of accounts in respect of the sale of the subject motor vehicle.
12. I have noted that the disputing parties, and rightly so, recorded a consent before the trial court on the management and handling of the subject motor vehicle during the pendency of the criminal case. This was to ensure that the subject motor vehicle remained in sound mechanical condition.
13. The fact that one party obtained orders to possess the subject motor vehicle and the applicant herein required to surrender the logbook thereof amounted to a premature determination of ownership of the subject motor vehicle. This in itself, and the ensuing order was an irregularity, which has the likelihood of stalling the conclusion of the criminal trial.
14. Consequently, I find the application dated 21st February 2023 has merit and allow the same in the following terms:
 - a). The orders by Hon. K. Sambu made on February 14, 2023, releasing motor vehicle KDH 208Q to one Mbogua Njoroge and requiring the applicant herein to deposit the vehicle's logbook in court, be and are hereby set aside.
 - b). The management and/or handling of the subject vehicle will obtain as per the consent order recorded on 3rd October 2022, saving for any variations as the court may deem fit in the interest justice.
 - c). The hearing of the criminal trial in Kiambu Cr. Case No. E861 of 2022 to be expedited. To this end, the original lower court record to be released and placed before the Chief Magistrate for further directions.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF FEBRUARY 2024.

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P. MULWA

JUDGE

In the presence of:

Mr. Gode for the Applicant



N/A for the Respondents

Court Assistant: Carlos

