



**Republic v Obado & 2 others (Criminal Case 46 of 2018)
[2024] KEHC 10562 (KLR) (Crim) (2 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 46 OF 2018**

AM MUTETI, J

SEPTEMBER 2, 2024

IN THE MATTER AN APPLICATION FOR RESTITUTION OF PROPERTY

BETWEEN:

ADHIAMBO OLOO OLIVIA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

BETWEEN

REPUBLIC PROSECUTOR

AND

ZACHARIA OKOTH OBADO 1ST ACCUSED

MICHAEL JUMA OYAMO 2ND ACCUSED

CASPER OJWANG OBIERO 3RD ACCUSED

RULING

1. This matter came up before me under certificate of urgency. The applicant vide Chamber Summons dated 29th August 2024 seeks the release of motor vehicle Registration Number KCL 481 K Chassis Number NZE 141-9136475 owned and registered in the name of Adhiambo Oloo Olivia.
2. The said Adhiambo Oloo Olivia is not one of the accused persons in the original murder file No. 46 of 2018.
3. I have perused the application and the accompanying affidavit.
4. I note that the applicant seeks restitution of property.



5. The applicant has moved the court under Rule 3 (1) & (2) of the *High Court (Practice and Procedure) vacation Rules* and Article 159 of the *Constitution*.
6. I do not think that the matter meets the test of a matter to be heard under the *Vacation Rules*.
7. Admittedly the motor vehicle has been in the parking yard as an exhibit in the murder case since September 2018.
8. The same has since been produced before the trial court as an exhibit as per the grounds set out on the face of the chamber summons.
9. The applicant does not state why they did not seek release of the motor vehicle before the trial court immediately after its production.
10. The vehicle having been seized on 19th September 2018, the same has been kept by the court as an exhibit.
11. This court is not seized of the facts of the matter in the trial before the learned Honourable Lady Justice Githua C. I cannot therefore make orders that are likely to impact on a matter that I am informed is still pending before a judge of concurrent jurisdiction.
12. The learned Lady Justice Githua is seized of the matter and it is my considered view that the court would be best suited to deal with all the issues arising as a result of investigations in the matter and disposal of exhibits.
13. Whereas I agree that the continued detention of the motor vehicle may constitute denial of the right to property, the right to that property is being limited for a legitimate purpose in accordance with the provisions of Article 24 of the *Constitution of Kenya*.
14. The right to a fair hearing is not derogable by dint of the provisions of Article 25 of the *Constitution*.
15. This court is alive to its duty to safeguard the interests of justice protect and uphold the rights of all the accused persons.
16. It is not possible for this court to tell what would be the impact of release of the exhibit at this stage and reiterate that since the matter is still pending before another judge, common decency would dictate that I decline proceeding to consider the notice of motion at this stage.
17. In the end I find that this is not a matter of utmost urgency in the circumstances. I decline to certify it as being fit to be heard during the vacation.
18. I order and direct that the Notice of Motion dated 29th august 2024 be place before the Learned Honourable Lady Justice Githua who is seized of the murder trial No. 46 of 2018 *Republic v. Zacharia Okoth Obado & 2 others* in the new term.
19. The matter shall be mention before the presiding judge of the Criminal Division on 17th September 2024 for further orders.
20. It is so ordered.

A. M. MUTETI

JUDGE

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 2ND DAY OF SEPTEMBER 2024.



In the presence of:-

Kiptoo: Court Assistant

No appearance for the Applicant

No appearance for the State

