



REPUBLIC OF KENYA



**Mwania v Republic & another (Criminal Revision E207 of 2022)
[2023] KEHC 708 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 708 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E207 OF 2022
MM KASANGO, J
FEBRUARY 9, 2023**

BETWEEN

JOYCE KINEENE MWANIA APPLICANT

AND

REPUBLIC 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

(Being a revision from an order of the Chief Magistrate's Court at Kiambu (Hon. K. Sambu, SPM) delivered on 21st July, 2022 in Criminal Case No. E612 of 2022)

RULING

1. The applicant Joyce Kineene Mwanja has invoked the provisions of Section 362 and 364 of the [Criminal Procedure Code](#) in support of her application for the Revision of the order made by K. Sambu, SPM in Kiambu Chief Magistrate's Court, Criminal Case No. E612 of 2022. The Ruling was delivered on 21st July, 2022.
2. What gave rise to that Ruling was an application filed by the applicant herein. The applicant sought before that court by the application dated 6th June, 2022 for orders:-
 - a. That the respondent and Director of Criminal Investigations Kiambu Road Headquarters does release the applicant's motor vehicle registration number KCW 333K Toyota Prado Chasis Number TRJ 150-004371 to the applicant.
 - b. That the second respondent does take photographs of the subject motor vehicle within 24 hours for production to the court as exhibits during trial if need be.
 - c. That the applicant gives a written undertaking to the respondent and she will produce the motor vehicle upon the direction of the honourable court if that be the case.



- d. That the honourable court does find the act and conduct on the part of the second respondent of the continued withholding of the subject motor vehicle beyond the 30 days period pending investigations granted by court as illegal, unlawful and a violation of the applicant's constitutional right.
 - e. That the costs of the application be provided for.”
3. The background of that application as far as I can discern from what is provided by the applicant is that Kennedy Kinuthia Njuguna (hereinafter Kennedy) was charged before Kiambu Chief Magistrate's Court with the offence of obtaining money by false pretences contrary to Section 313 of the *Penal Code*. It would seem that at the time of his arrest, Kennedy was in possession of motor vehicle registration number KCW 333K (the subject vehicle). That subject vehicle was the one which was the subject of the impugned Ruling.
 4. The applicant by her application before the Kiambu Chief Magistrate's Court as enumerated above sought for release of the subject vehicle on the ground that the vehicle is registered in the joint names of the applicant and her financier namely, NCBA BANK. That financier was with the leave of K. Sambu, SPM joined in the hearing of the application. The learned Senior Principal Magistrate Hon. K. Sambu by his considered Ruling declined to order the release of the subject vehicle to the applicant. The court's reasoning for declining to order the release of the subject vehicle was in part as follows:-
 - “7. From the onset I would wish to point out with the tremendous respect that the interested party's legal redress and her recourse in my view lies in the Civil realm and their question to have the subject motor vehicle released for her to realise and to secure the security offered in a loan facility allegedly admitted to the applicant herein, trading in the name and style of Timely and Diligent Supplies cannot obtain a such quasi Criminal Misc. Application.
 8. I take cognizance of the fact the subject motor vehicle has neither been impounded in evidence as an exhibit nor evidence led connecting and/or linking the same to the commission of crime alluded to against one Kennedy Kinuthia Njuguna in the primary criminal proceedings vide Cr. E612 of 2022. It is worth of note that there is no mention at all of the subject motor vehicle in the charge sheet presented in the pending criminal proceedings herein.
 9. That, said, the issued in controversy raised in the present application as to whether or not the subject motor vehicle was procured and/or purchased from proceeds of crime and the circumstances surrounding its illegal transfers from the hands of the said Kennedy Kinuthia Njuguna, to the application herein, both parties alleged to be a husband and a wife to my considered view are weighty trial be issues which can only be canvassed and determined in the primary criminal proceedings but not by affidavit evidence as it (sic) the case in the presented Misc. Application.
 10. To grant orders sought by the applicant to the presented applicant at this point in time to my view, would amount to undue interference of the constitutional functions of other independent institutions, envisaged under the Constitution 2010.



11. It is for the foregoing reason(s) that I find the applicant's notice of motion dated 6th June, 2022 premature and lacking merit which application is hereby dismissed with no orders as to costs."
5. The parameters within which the High Court may examine the record of criminal proceedings of subordinate court for purpose of revising an order of sentence of that court is set out in Section 362 and 364 of CPC. The High Court can only revise an order or sentence of the subordinate court after satisfying itself of the lack of correctness legality or propriety of the order or sentence. The ground the applicant brought to this Court seeking revision of the order of the subordinate court was that the subject vehicle attached by the respondents is registered in her name and that it does not feature in the prosecution of Kennedy. The subordinate court will eventually decide, bearing in mind the evidence presented and the submissions made whether the subject vehicle was proceeds of the crime that Kennedy is charged before that court.
6. Although the applicant contends that the vehicle is registered in her name jointly with that of the financier, the investigating officer in the criminal case against Kennedy through a sworn affidavit deponed that there was a paper/money trail which showed the complainant deposited the money which Kennedy is alleged to have obtained by false pretence into Kennedy's account and that those funds were used by Kennedy to purchase the subject vehicle in his name. Kennedy subsequently transferred the subject vehicle to the applicant who is his wife.
7. That evidence was not countermanded by the applicant. The subordinate court having considered that evidence alongside the evidence of the applicant declined to grant the order for the release of the subject vehicle. In my considered view, the order made by that court stands the test of correctness legality and propriety. The said court was entitled to assess the evidence adduced and to pronounce itself as it did in exercise of its discretion. This Court has no power to interfere with the order made. This Court declines to substitute the said order with its discretion or by what the applicant seeks by this revision.
8. In the end, the application for revision is devoid of merit and is therefor declined. This file shall henceforth be closed.
9. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF FEBRUARY, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For DPP :-

Instructed by Maxwell Njehu Advocate for applicant:- Mr. Njehu

Instructed by DPP for Respondent:- Mr. Gacharia

RULING delivered virtually.

MARY KASANGO

JUDGE

