



Director of Public Prosecutions v Thumbi (Miscellaneous Criminal Application E456 of 2021) [2023] KEHC 1771 (KLR) (Crim) (13 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E456 OF 2021
JM BWONWONG'A, J
MARCH 13, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND

JOHN WAWERU THUMBI ACCUSED

(Being an application arising from the judgement of acquittal delivered on 9th December 2021 by the Hon. N.A Nanzushi P.M in Milimani Chief Magistrate's Court Criminal Case No. 4572 of 2020 Republic vs John Waweru Thumbi)

RULING

1. The Republic (state) filed an application under certificate of urgency pursuant to sections 132, 354 and 365 of the [Criminal Procedure Code](#) (cap 75) Laws of Kenya, and under article 159 of the 2010 [Constitution](#) of Kenya, and pursuant to sections 1A, 1B and 3A of the [Civil Procedure Act](#) and under all the enabling provisions of the law.

The Case For The Republic/Applicant

2. The applicant sought the following major orders.
 1. Spent
 2. An order of stay of execution of the judgement of acquittal delivered on December 9, 2021 by the Hon NA Nanzushi PM in Milimani Chief Magistrate's Court Criminal Case No 4572 of 2020, *Republic vs John Waweru Thumbi*; including stay of all consequential orders in respect of motor vehicle registration No KCR 360L pending the hearing and determination of this application.



3. An order of stay of execution of the said judgement and all consequential orders therefrom in respect of motor vehicle registration No KCR 360L pending the hearing and determination of this appeal.
 4. An order directing that motor vehicle registration No KCR 360L to continue being held by the OCS Central Police station, Nairobi pending the hearing and determination of the appeal.
- 3 The application is supported by the following major grounds. The accused/respondent was charged with two counts namely stealing a motor vehicle registration No KCR 360L and obtaining registration of the said motor vehicle by false pretences. The accused/respondent was acquitted by hon N A Nanzushi PM., who additionally ordered the said motor vehicle to be released (restituted) to the accused/respondent.
- 4 The foregoing grounds by the state are reiterated in the supporting affidavit of the complainant (victim) namely Damaris Muthoni Mwololo, whose averments I have declined to reproduce herein.

The Case For The Accused/Respondent

- 5 The respondent swore a sixteen paragraphs replying affidavit in opposition to the application, whose major averments are as follows. The respondent averred that before he was charged, he had filed an application in Nairobi CMCC E5357 of 2020, *John Waweru Thumbi v Damaris Muthoni Mwololo*; in which he sought the release of the said motor vehicle to himself. The court declined to do so, because he was charged with stealing the said motor vehicle and obtaining its registration by false pretences. And that the said motor vehicle was seized by police as an exhibit in the criminal proceedings.
- 6 After he was acquitted the respondent file an application dated December 31, 2021, before the lower court in which he sought review and setting aside of the court's earlier ruling dated December 8, 2021. Additionally, he applied to have the defence of Damaris Muthoni Mwololo to be struck out for being frivolous and for failing to disclose a reasonable cause of action in that lower court.
- 7 The lower court allowed the application of the accused/respondent and ordered the said motor vehicle to be released to him.
- 8 It is the said release order that is now the subject of this application in which the state is the applicant.

Issues for determination

- 9 I have considered the applicant's application and the supporting grounds which are reiterated in the affidavit of the complainant (victim). I have also considered the respondent's replying affidavit.
- 10 As a result, I find that it is common ground that the subject motor vehicle was an exhibit in *Republic V John Waweru Thumbi*, Nairobi Criminal Appeal No E145 of 2021, in which this court (J M Bwonwong'a, J) found there was a dispute in respect of the ownership of the said motor vehicle, which was a matter for the civil court to determine.
- 11 I further find that there is in place a civil case between the respondent and the complainant in the lower court, being Nairobi CMCC E5357 of 2020, *John Waweru Thumbi v Damaris Muthoni Mwololo*; in which the subject matter is in respect of the said subject motor vehicle.
- 12 I therefore find that it is for that lower court to determine as to who is the owner of the subject motor vehicle registration No No KCR 360L.



- 13 I only need to point out that I did not delve into the others issues raised in this application. This was intended to avoid making any remarks that might prejudice the fair trial of the matter in that lower court.
- 14 Consequently, I find that the applicant's application fails and hereby dismissed for lacking in merit.
- 15 It is equally important to point out that the DPP has always never been a party to criminal proceedings; for he is the chief prosecuting counsel on behalf of the Republic. See *Tenywa Maganda v Attorney General* (1954) EACA 290. It was therefore not proper to indicate the DPP as the applicant in the present proceedings.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF MARCH 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Mr. Mutuma for the Republic/applicant

Mr. Kusow for the accused/ respondent.

