



**Mohamed v Laurie & 3 others (Criminal Revision E177 of 2022)  
[2023] KEHC 2343 (KLR) (Crim) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E177 OF 2022  
JM BWONWONG'A, J  
MARCH 16, 2023**

**BETWEEN**

**IRFAN MOHAMED ..... APPLICANT**

**AND**

**GEOFFREY ROWAN JAN LAURIE ..... 1<sup>ST</sup> RESPONDENT**

**NEWTON KIRIMI ..... 2<sup>ND</sup> RESPONDENT**

**DCI ..... 3<sup>RD</sup> RESPONDENT**

**DPP ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for revision of the order Hon. C M Njagi, SRM, dated 27th July 2022, Geoffrey Rowan Jan Laurie v Irfan Mohamed & 4 others in Milimani CM'S Court in Misc Criminal Application No. E1770 of 2022)*

**RULING**

1. On July 29, 2022, the lower court made the following major orders.
  1. The logbook of motor vehicle registration No KDG 2777J Toyota Hilux be deposited with the investigating police officer 2. Photographs of the said vehicle be taken by the scenes of crime personnel, if they had not been taken.
  3. The said vehicle be released to the applicant (Irfan Mohamed) within 7 days.
  4. The said motor vehicle be availed in whenever it is required in the criminal case against the 2<sup>nd</sup> respondent (Newton Kirimi).



2. These are the orders sought to be revised. For reasons that will appear below in this ruling, I will not set out in detail the contents of the affidavits and the submissions of the parties.

### **The Case For The Applicant**

3. Counsel for the applicant (Ms Morara) submitted the applicant is the registered owner of the subject motor vehicle registration No KDG 2777J Toyota Hilux.
4. She further submitted that there was no sale agreement between the applicant and the 1<sup>st</sup> respondent.
5. Counsel continued to submit that there was a sale agreement between the applicant and the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent took possession of the subject motor vehicle on January 4, 2020.
6. It is the trial court that gave the subject motor vehicle to the 1<sup>st</sup> respondent on the basis that he had paid for it.
7. Counsel has also submitted that the police should take photographs of the subject motor vehicle and be ordered to release it to the applicant.

### **The Case For The 1<sup>st</sup> Respondent**

8. Counsel for the 1<sup>st</sup> respondent submitted that the 2<sup>nd</sup> respondent sells cars on behalf of his customers. He continued to submit as follows. The 2<sup>nd</sup> respondent was agent of the applicant. As an agent he sold the subject motor vehicle to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent fully paid the purchase price in the sum of Kshs 5,500,000/- to the 2<sup>nd</sup> respondent.
9. The 1<sup>st</sup> respondent took possession of the subject motor vehicle awaiting the transfer of the ownership of the vehicle to himself from the 2<sup>nd</sup> respondent.
10. As the 1<sup>st</sup> respondent was waiting for the transfer of the vehicle from the 2<sup>nd</sup> respondent, the applicant instructed auctioneers who repossessed the vehicle and took it away.

### **The Case For The 3<sup>rd</sup> And 4<sup>th</sup> Respondent**

11. Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents (Ms Chege) submitted as follows. she submitted that the applicant is the registered owner of the subject motor vehicle. She further submitted that initially, the trial court released the vehicle to the applicant. Later the court directed the vehicle to be released to the 1<sup>st</sup> respondent. She also submitted that they do not support the orders sought to be revised. In other words, she wants the orders to be revised.
12. The respondent is charged with the offence of stealing the subject motor vehicle in the case pending before trial in the lower court.
13. Finally, counsel submitted that the issue of ownership of the motor vehicle should be determined by a civil court.

### **Issue For Determination**

14. I have considered the submissions of the parties in the light of the applicable law.
15. As a result, I find that the only issue for determination is whether the trial court had jurisdiction to order the vehicle to be released to the 1<sup>st</sup> respondent.



## Analysis And Determination

16. It is clear that the applicant claims to be the owner of the subject motor vehicle on the basis that he is the registered owner.
17. The 1<sup>st</sup> respondent claims ownership of the same subject motor vehicle on the basis that he bought it from the 2<sup>nd</sup> respondent and fully paid the purchase price. It is submitted by counsel for the 1<sup>st</sup> respondent that the 2<sup>nd</sup> respondent was the agent of the applicant.
18. I find that it is common ground that the ownership of the subject motor vehicle is in dispute between the applicant and the 1<sup>st</sup> respondent.
19. In these set of circumstances, the trial court did not have jurisdiction to determine the ownership of the subject motor vehicle. The trial court was sitting as a criminal court, whose jurisdiction was to determine the guilt or innocence of the accused, before him, who was the 2<sup>nd</sup> respondent. As a criminal court it would only have jurisdiction over the subject motor vehicle only if it had been produced as an exhibit.
20. By returning the subject motor vehicle to the 1<sup>st</sup> respondent, the trial court had put the entire judicial authority in support of one party (the 1<sup>st</sup> respondent) to the disadvantage of the other claimant to the ownership of the motor vehicle (the applicant). In doing so, the trial court stopped to be an impartial arbiter and became partisan in the matter. The court was unconsciously serving the interests of the 1<sup>st</sup> respondent.
21. Even after being produced as an exhibit, a criminal trial does not have jurisdiction to determine the ownership of the exhibited motor vehicle. If any authority was required in that regard, it is to be found in the persuasive decision of the Court of Appeal in *Alinyo & another* (1974) EA 544. In that case, it was held that disputes concerning the ownership of property should be litigated in a civil court and not in a criminal court.
22. It therefore follows that the trial court lacked jurisdiction to order that the subject motor vehicle be released to the 1<sup>st</sup> respondent.
23. It is in view of the immediate foregoing reasons that I declined to consider in detail the affidavits and the submissions of the parties. The other reason for declining to delve into the matter and make findings was to avoid any possible prejudice to the pending criminal trial of the 2<sup>nd</sup> accused/respondent.
24. In the circumstances, I allow the applicant's application with the result that the orders made by the trial court are hereby set aside.
25. The subject motor vehicle will remain in the custody of the investigating police officer until the criminal trial is heard and determined.
26. By virtue of the orders made by the trial court, that court ceased to be an impartial orbiter. I find that the parties will not have a fair trial in the trial court. I therefore disqualify the learned trial magistrate from trying the criminal case.
27. Consequently, this case will now be tried by another magistrate of competent jurisdiction pursuant to the powers vested in this court by [section 364 \(1\)](#), which provides that:
28. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—



- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.”

**JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH 2023.**

**J M BWONWONG'A**

**JUDGE**

**In the presence of-**

Mr. Kinyua: Court Assistant

Ms Morara for the applicant

Mr. Warutumo for the 1<sup>st</sup> respondent.

Ms Mukhabana for the 2<sup>nd</sup> Respondent, absent

Mr. Mutuma for the 3<sup>rd</sup> and 4<sup>th</sup> respondents

