



**Roba v Republic (Miscellaneous Criminal Application E311 of 2022)
[2023] KEHC 2802 (KLR) (Judicial Review) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS CRIMINAL APPLICATION E311 OF 2022
JM BWONWONG'A, J
MARCH 8, 2023**

BETWEEN

RASHID ALI ROBA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of the orders issued by Hon A. Mwangi,
P.M, on 18th October 2022 in Makadara Chief Magistrate's Court
in Criminal Case No. 1075 of 2022, Republic vs Rashid Ali Roba)*

RULING

1. The application for determination was filed by Rashid Ali Roba pursuant to article 165 (6) of the Constitution of Kenya, sections 362, 364 and 365 of the Criminal Procedure Code (cap 75) Laws of Kenya and all other enabling provisions of the law.
2. The applicant sought orders that the ruling delivered by the trial court be varied, vacated, set aside and or discharged. The applicant also prayed that this court orders the immediate release of the Motor Vehicle registration No. KCR 727K to the applicant.
3. The application was supported by the grounds set out on the face of the notice of motion and reiterated in the supporting affidavit dated October 27, 2022 deposited by the applicant. The applicant has averred as follows. On February 22, 2022, while going about his business as an Uber operator, he was arrested on suspicion of engaging in the crime of human trafficking. His motor vehicle registration number KCR 727K was impounded. Subsequently, he was charged with the offence of trafficking in persons. Although the matter is yet to come up for hearing, from the prosecution's evidence supplied, it has become apparent that the said motor vehicle was not in any way linked to the alleged offence.



4. The applicant stated that on May 28, 2022, he filed an application before the trial court seeking the release of the motor vehicle. On October 18, 2022, the trial court disallowed his application. The applicant now argues that the court erred in reaching that conclusion. This is because the evidence on record demonstrates that the vehicle is not in any way connected to the crime. In addition, there is no justification to deprive him of his property. He urged the court to order for release of the motor vehicle. He is ready to abide by any pre-conditions the court may impose.

The applicant's written submissions

5. The applicant did not file written submissions despite being given an opportunity to do so.

The respondent's written submissions

6. Mr. Kiragu, learned prosecution counsel submitted that the issues raised by the applicant can only be determined at the trial stage. Further, the motor vehicle in issue is yet to be produced as an exhibit in the trial court. In addition, the motor vehicle can be subject to forfeiture under the provisions of section 177 of the *Criminal Procedure Code* (cap 75) Laws of Kenya. Counsel cited the case of *Republic v Cape Van International Limited & another* [2004] e-KLR. In that case, the court held that a magistrate court can only make an order restituting the property to a proved owner under the provisions of section 177 of the *Criminal Procedure Code*, after the said goods have been produced in exhibits before the court.

Issues for determination

7. I have considered the application, the response, the written submissions and the applicable law. The issue that arises for determination is whether the applicant has made out a case for the grant of the orders sought.

Analysis and determination

8. The power of the court in the revision of orders of the trial court is indubitable under section 362 of the *Criminal Procedure Code* as follows:
 62. Power of High Court to call for records
The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
9. Section 364 (1) of the *Criminal Procedure Code* provides that this jurisdiction may be invoked by any means by which the court may be notified or made aware; and indeed, the court may call for a matter for revision where it otherwise becomes aware of a matter that requires revision to ensure the legality of the processes in the trial court.
10. In the instant application, the applicant sought a variation of the orders of the trial court. Before the trial court, the applicant had sought the release of motor vehicle registration number KCR 727K.
11. I have considered the application and submissions. I have also perused the impugned ruling of the trial court delivered on October 18, 2022. The trial court dismissed the applicants' application for the release of the motor vehicle.
12. In the premises, the key issue for consideration is whether the proceedings of the lower court and the ruling can be faulted in terms of correctness, legality or propriety.



13. From the record, the trial court considered the application, the response thereto and the submissions of the advocates. It is manifest from the foregoing that the learned magistrate reached his decision after giving due consideration to the respective positions taken by the parties before him. The applicant was therefore given an opportunity to articulate his case before the ruling was delivered.
14. The applicant has attempted to challenge the application on the merits of the decision arrived at by the learned trial magistrate. For instance, that the trial court erred in refusing to release the vehicle, yet it was not connected to the alleged offence. Further, there is no justification to deprive the applicant of his right to property ownership.
15. In making a finding that the application was premature, the trial court was within its right to make such a determination. Hence, I find nothing in the record of the lower court to show an illegality, irregularity, or impropriety to warrant review of the orders of the lower court.
16. As a result, I find the application for revision is completely devoid of merit.
17. In the premises, the application is hereby dismissed.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF MARCH 2023.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Kinyua court assistant.

Mr. Abdirizak for the applicant

Ms. Oduor for the respondent

Applicant in person

