



**Republic v Capital & 2 others (Criminal Revision E085 of 2024)
[2024] KEHC 14431 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E085 OF 2024
DR KAVEDZA, J
NOVEMBER 20, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

SHALEY CAPITAL 1ST RESPONDENT

REFUGE TRAVEL LIMITED 2ND RESPONDENT

GERALD NDEMO RASUNGU 3RD RESPONDENT

RULING

1. The applicant has filed an undated Notice of Motion received on 19th November 2024, seeking revision orders under the impugned ruling in Kibera Misc. Application No. E1048 of 2024. Specifically, they challenge the order issued on 15th November 2024, which was to the effect that the motor vehicle registration number KDD 835Q Toyota Prado at DCI Muthangari Police Station be released to the 1st respondent. The applicants request that the orders be set aside pending the hearing and determination of this application.
2. The application is supported by an affidavit of even date sworn by Ms. Kathurima, learned prosecution counsel. The applicant contend that the motor vehicle in issue is part of ongoing investigation in a case of trafficking of narcotic drugs. The investigations are yet to be concluded. Despite a pending inter partes hearing on the respondent’s application, the trial court issued ex parte orders releasing the motor vehicle to the 1st respondent. The applicant argues that they were not afforded an opportunity to be heard and further that the application was filed without delay. The applicant further maintains that granting the orders sought will not prejudice the respondents but will ensure fair determination of the matter.
3. Upon considering the application and supporting affidavit the court's primary duty at this stage is to assess whether the applicant would suffer prejudice if the orders sought are not granted. Granting the



orders is imperative to prevent irreparable harm, as allowing the respondents unfettered access to the motor vehicle who are not estopped from disposing it may render the application nugatory and defeat the purpose of the proceedings.

4. In the premises, I hereby make the following orders:
 - i. The matter is certified urgent
 - ii. The order issued on 15th November 2024 at Kibera Chief Magistrate's Court Miscellaneous Application No. E1048 of 2024 releasing Motor Vehicle registration number KDD 835Q Toyota Prado held at the Directorate of Criminal Investigations Muthangari Police Station to the 1st respondent is hereby set aside in their entirety pending hearing and determination of this application.
 - iii. The applicant is directed to serve the respondents with the application and order of this court within 3 days from the date hereof.
 - iv. Upon service, the respondent is directed to file a response within 7 days.
 - v. The deputy registrar is directed to ensure that the original untyped trial court file and miscellaneous application file is availed within 7 days from the date hereof.
 - vi. The application shall be heard on 10th December 2024.

RULING DATED AND DELIVERED VIRTUALLY THIS 20TH DAY OF NOVEMBER 2024

D. KAVEDZA

JUDGE

