



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**CRIMINAL REVISION NO E001 OF 2020**

**TIMON AYIEKO OCHIENG.....1<sup>ST</sup> APPLICANT**

**JUMA KOMBO DONE.....2<sup>ND</sup> APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. The Applicants Timon Ayieko Ochieng and Juma Kombo Done by an application dated 7<sup>th</sup> October 2020 that prayed that Motor Vehicle Registration Number KCX 348 C be released unto them as it belonged to 1<sup>st</sup> Applicant who had bought it on hire purchase and leased it to 2<sup>nd</sup> Applicant. They also prayed that order of forfeiture made on 30<sup>th</sup> September 2020 by the trial court in Mombasa CMC CR. Case Number 1353 of 2020 be released.
2. The Application was supported by the grounds on the face of Notice of Motion and the Supporting Affidavit of 2<sup>nd</sup> Applicant together with annexures thereto.
3. The Respondent was served but they didn't file a response.
4. This court went through the trial courts proceedings and established that the order of forfeiture was made without a notice to show cause being issued. The matter was referred to the trial court to undertake proper procedure but the trial magistrate declined to do so on allegations of lack of jurisdiction.
5. Failure by the trial court to act on the orders issued by the High Court prompted the Applicants to move this court to reconsider orders issued on 17<sup>th</sup> November 2020 and 26<sup>th</sup> February 2021.
6. Upto the time that the Applicant's sought the courts intervention, a second time, the Respondent had not filed a response opposing or conceding to the application.
7. On 6<sup>th</sup> October 2021 Mr. Mulamula for Respondent was given 7 days to respond to the application but still on 13<sup>th</sup> October 2021 there was still no response.
8. On 22<sup>nd</sup> October 2021 Mr. Mulamula informed the court that the Investigating Officer had prepared a response which was to be filed by close of business and they were granted 3 days to file a response and submissions but as I write the ruling no such response or submissions are in the file.
9. In the circumstances that the Respondent have not filed a response opposing the application and in consideration of the affidavit by the 2<sup>nd</sup> Applicant and annexures thereto this court has no reason to disallow the applications.
10. The application dated 7<sup>th</sup> October 2020 is allowed. Motor vehicle Registration KCX 348 C Mazda Demio to be released to 1<sup>st</sup> Applicant forthwith. Orders accordingly.

**DATED, SIGNED AND DELIVERED ONLINE THROUGH MS. TEAMS ON THIS 9<sup>TH</sup> DAY OF DECEMBER, 2021**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:-**

Mr. Otoló – Court Asst.

Mr. Mulamula for Respondent

Ms. Wambani Advocate hold brief for Mr. Mwangunya for Applicant

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**