



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HIGH COURT CRIMINAL REVISION NO. 7 OF 2019**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**JOHN KYALO MUTISYA.....1<sup>ST</sup> RESPONDENT**

**MOSES WACHIRA KABURU .....2<sup>ND</sup> RESPONDENT**

**MARK MATHEKA .....3<sup>RD</sup> RESPONDENT**

**(From the original Ruling before J. D. Karani - Resident Magistrate, case No. SPMCR. no. 513 of 2019 of the SPM's Court at Makindu on 25-07-2019.)**

**RULING**

1. The State applied for Revision of Orders in Makindu SPM Cr. Case No. 513 of 2019, **Republic –vs- John Kyalo Mutisya, Moses Wachira Kaburu and Mark Matheka.**
2. The order sought to be reviewed relates to release of a motor vehicle KCL 393L (*trailer*). It was issued on 25<sup>th</sup> July 2019 by the Resident Magistrate Makindu – J. D. Karani upon an application being made by Mr. Kasyoka for the 1<sup>st</sup> and 3<sup>rd</sup> accused in the said case. The application was made on behalf of Mukulu David Nzuki the owner of the said vehicle and referred to as the interested party. The same was not objected to by the learned prosecuting counsel M/s Nzuki which was an error.
3. The interested party filed a replying affidavit opposing the application by the State.
4. When the application came for hearing on 17<sup>th</sup> September, 2019, Mr. Kasyoka indicated to the court that the interested party was no longer opposing the application. All she wanted was for the hearing to be expedited so that she gets her vehicle back.
5. Upon the filing of this application the court stayed the order by the Resident Magistrate ordering for release of the motor vehicle KCL 393L (*trailer*) to the interested party. This court also called for the original file and has perused it.
6. I have clearly observed that the motor vehicle in issue has not been produced as an exhibit before the court. Besides, the registration number cited the trial court does not even know how the vehicle she ordered released looks like.
7. It was therefore an error for the court to make such an order before determining the role played by this trailer in the commission of the offence that was before the said court.
8. Secondly, the court could not release an exhibit in the abstract without even confirming its existence, and/or even seeing it.
9. It was also wrong for the prosecuting counsel to support the application without consulting the investigating officer in the matter.
10. For the above reasons;

**i. I hereby set aside the orders issued on 25<sup>th</sup> July, 2019 by J.D Karani Resident Magistrate Makindu SPM's court releasing the motor vehicle (trailer) KCL 393L to the interested party Mukulu David Nzuki.**

ii. The file in respect to this matter to be placed before the SPM Makindu for mention for re-allocation on 19<sup>th</sup> September, 2019 to any Magistrate besides J.D Karani, Resident Magistrate for hearing and determination.

iii. Let the trial court hear and determine the matter expeditiously since it involves a motor vehicle whose owner is not a party to the proceedings.

iv. In the event that there is need to release the motor vehicle in issue, the proper procedure must be strictly adhered to.

Orders accordingly.

**DELIVERED, SIGNED & DATED THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2019, IN OPEN COURT AT MAKUENI.**

.....

**H. I. ONG'UDI**

**JUDGE**