



**Kamau v Republic & another (Criminal Miscellaneous Application
E068 of 2025) [2025] KEHC 13336 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E068 OF 2025
WM KAGENDO., J
SEPTEMBER 25, 2025**

BETWEEN

DANIEL MAHIANYU KAMAU APPLICANT

AND

THE REPUBLIC 1ST RESPONDENT

OCS, CENTRAL POLICE STATION-MOMBASA 2ND RESPONDENT

RULING

1. By way of a Notice of Motion dated 13th May, 2025 brought under Article 40 and Article 159 of the C.O.K the applicant moved the court for ORDERS;
 1. That this Honourable court be pleased to order that the Motor vehicle Registration Number KBX 923J Toyota Probox detained at Central Police Station in Mombasa be released unconditionally to the applicant.
 2. That the costs of the application be provided for.
2. The application is propped by the grounds on its face and the affidavit of the applicant. The applicant deposed that he was charged in Mombasa MCCR No. E402 of 2020 Republic vs Daniel Mahianyu, where his motor vehicle reg no. KBX 923J Toyota Probox was detained by the respondents in the pendency of the hearing of the said matter.
3. That, on the 5th February, 2025 the case was determined and the matter withdrawn, where thereafter the applicant has in three (3) separate occasions sought to have the motor vehicle released unsuccessfully.
4. It is the applicant argument that there being no other case against him and/or his motor vehicle, it is necessary that the applicant be allowed to enjoy his right to property.



Written Submissions

1. The applicant appreciated the right to seize any property suspected to have been used in the commission of an offence or to be evidence of an offence under Sec 121 (1) of the CPC, he rehashed his arguments as aided by Sec 121 (3) of the Act, to the end that the court has the discretion to order the release of the motor vehicle to its rightful owner.

Analysis and Determination

1. Section 121 of the Criminal Procedure Code, provides as follows;
2. When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation
3. If an appeal is made, or if a person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.
4. If no appeal is made, or if no person is committed for trial, the court shall direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it otherwise.
5. It is appreciated where in so far as it is reasonably believed that any property has been involved in the commission of an offence or it is subject to investigations, the same may be detained but reasonably be taken care of for preservations in the pendency of the case and/or investigations.
6. In this instance the applicant argues that he was charged in Mombasa MCCR No. E402 of 2020 Republic vs Daniel Mahianyu, where the suit motor vehicle was detained by the respondents in the pendency of the hearing of the said matter. That, on the 5th February, 2025 the case was determined and the matter withdrawn, thus it is only an inevitable consequence that the detained motor vehicle be released to him.
7. I have perused and considered the annexures on record, specifically a printout of the E-filing dashboard in the aforementioned MCCR No. E402 of 2020, where the matter is marked as withdrawn under Sec 87 (A) of the CPC, coupled by a Refund Order of the cash bail deposited in court in the matter.
8. This notwithstanding, I note that in as much as the applicant has sought to establish that the case in the Magistrates Court was withdrawn, he has done little to at the very least establish prima facie that he is the owner of the same. In as much as this court appreciates the various nuances in the ownership of motor vehicles, whether registered or beneficial, an NTSA Certificate of Motor Vehicle search would have sufficed to establish the same, on a prima facie basis.
9. I note that the wording under Sec 121 (3) of the Act prescribes that the court may direct that the subject property be restored to the person from whom it was taken. However, this court is neither the trial court nor is it privy to the circumstances under which the subject vehicle was detained as the trial court's file was not availed.
10. In so far as the face value proof of ownership of a motor vehicle is concerned Section 8 of the *Traffic Act* provides as follows:

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle”



1. The above provision establishes a rebuttable presumption of ownership of a vehicle, which in this instance would have been suitable for the applicant, if the same was availed.
2. In my view, it would be whimsical at best, for this court to capriciously release the subject vehicle to the applicant without proof that he is its owner.
3. It would follow that the application is wanting of merit, strictly to the extent that the application is wanting of evidence/proof of ownership of the subject motor vehicle, and the same is accordingly dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS...25TH SEPTEMBER...
DAY OF... 2025.**

W.K. MICHENI JUDGE

IN THE PRESENCE OF:

For the Applicant.....

For the Respondent.....Mr Sirima.....

Court Assistant.....Ms Bebora.....

Signed by/for:

HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

