



REPUBLIC OF KENYA



KENYA LAW
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Njeru v Office of the Director of Public Prosecutions (ODPP) & another (Criminal Appeal E002 of 2025) [2025] KEHC 13509 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL APPEAL E002 OF 2025
RB NGETICH, J
SEPTEMBER 18, 2025**

BETWEEN

ERIC MUCHANGI NJERU APPELLANT

AND

**THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
(ODPP) 1ST RESPONDENT**

KENYA REVENUE AUTHORITY 2ND RESPONDENT

RULING

1. The appellant/applicant has moved this Court by Notice of Motion dated 20th March, 2025 under Section 349 of the Criminal Procedure Code seeking orders that:
 - a. There be a stay of execution of the forfeiture order issued in Eldama Ravine Criminal Case No. E235 of 2023, Republic v. Eric Mutethia, pending hearing and determination of this appeal.
 - b. The forfeiture order issued against motor vehicle registration number KCH 159M Nissan Caravan be set aside.
2. The application is premised on grounds that the appellant was never given an opportunity to be heard before the forfeiture order was issued, in violation of his right to a fair hearing. He contends that he was not a party to the criminal proceedings, yet his motor vehicle was forfeited without notice to him.
3. The application is supported by the appellant's affidavit in which he avers that he is the registered and beneficial owner of motor vehicle Registration Number KCH 159M Nissan Caravan and that he was not charged or notified of the proceedings, and that forfeiture has deprived him of his sole means of livelihood. He maintains that his appeal raises arguable issues with high chances of success.



Response

4. The 2nd respondent, through a replying affidavit sworn by Joab Omolo Ogola, opposed the application. He deposed that the motor vehicle was lawfully seized on 11th March, 2023 while ferrying excisable goods being 800 pieces of Spark Vodka with counterfeit stamps, and upon trial, the driver was convicted and fined him Kshs 320,000/- in default two years' imprisonment.
5. It was deposed that the appellant, though the registered owner, failed to lodge any claim for nearly two years during which the vehicle remained detained. The respondents argue that equity aids the vigilant and not the indolent, and that the forfeiture was lawful and in line with the Excise Duty Act, the Excise Duty (Excisable Goods Management Systems) Regulations, 2017, and the Tax Procedures Act.

Submissions

4. The applicant relied on pleadings on record while the 2nd respondent, whose submissions were adopted by the 1st respondent, reiterated the facts in the replying affidavit and submitted that the forfeiture followed due process after the driver's conviction. Further that the applicant's constitutional right to a fair hearing was not violated as he was given an opportunity to claim the vehicle but failed to do so and the vehicle, having been used to ferry counterfeit goods was an instrument of crime and did not enjoy property protection under Article 40 of the Constitution.

ANALYSIS AND DETERMINATION

4. The issue for determination is whether the appellant has satisfied the conditions for stay of execution pending appeal.
5. The principles for grant of stay are well settled. In *Gatirau Peter Munya v. Dickson Mwenda Kithinji* [2014] eKLR, the Supreme Court outlined that an applicant must show:
 - a. The appeal is arguable and not frivolous.
 - b. Unless stay is granted, the appeal would be rendered nugatory.
 - c. It is in the public interest that stay be granted.
8. I have perused the petition of appeal. The appellant contests that the forfeiture order was made without his participation, contrary to his right to a fair hearing under Article 50. This raises arguable grounds worth consideration at appeal.
9. On whether the appeal will be rendered nugatory, the appellant avers that the forfeited motor vehicle is his only source of livelihood. If disposed of before the appeal is heard, the loss will be irreversible and the appeal, if successful, will be rendered nugatory.
10. The respondents argue that the forfeiture was lawful and the appellant was indolent in asserting his rights. While these are weighty points, they go to the merits of the appeal and will be fully addressed at that stage.
14. At this interlocutory stage, I am satisfied that the applicant has demonstrated both arguable grounds of appeal and that substantial loss would result unless stay is granted. In the circumstances, I find merit in the application and allow stay orders in respect to forfeiture of the vehicle herein.
8. Final Orders: -



- a. I hereby stay execution of the forfeiture order in respect to motor vehicle registration Number KCH 159M Nissan Caravan issued in Eldama Ravine Criminal Case No. E235 of 2023 pending hearing and determination of this appeal.
- b. The record of appeal to be filed and served within 30 days from the date hereof.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 18TH DAY OF SEPTEMBER, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Nyagaka for Appellant.

M/s Mburu for 1st Respondent/DPP.

CA, Elvis.

