



**Kariuki v Republic (Miscellaneous Criminal Application E050 of 2025)  
[2025] KEHC 14561 (KLR) (Crim) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E050 OF 2025  
MW MUIGAI, J  
OCTOBER 9, 2025**

**BETWEEN**

**JAMES MAINA KARIUKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed the Notice of motion dated 20/3/2025 seeking orders that:
  1. ....(Spent)
  2. The orders of Hon. J Ombura SPM delivered on 2/3/2025 in Chief Magistrate Criminal Case No E970/2021 Republic -Vs- Charles Ngari Kamau on sentencing be and hereby revised .
  3. An order directing the Motor vehicle registration number KAW 401 H Toyota Hiace held at DCI Headquarters along Kiambu road be released to James Maina Kariuki
  4. An order directing that assorted LPG cylinders namely : 108 -6 kg Pro gas cylinder ,2-13 kg Pro gas 4-6 Kg Kgas cylinder , 2-6kg Total gas cylinders , 1-6 kg Lake gas and 1-6 kg Hashi gas be released to the James Maina Kariuki .

**Grounds Of The Application**

2. The Application is brought under the provisions of Articles 40 (1) 50 (2) (q) and Article 165 (6) and (7) of *the Constitution* and Section 362 of the Criminal Procedure Code.
3. The applicant claims ownership of the motor vehicle and LPG gas cylinders produced as exhibits in Chief Magistrate Criminal Case No E970/2021.



4. Charles Ngari Kamau was charged and convicted with the following offences:
  - I. Trading and dealing with LPG Cylinders of another licensee without the Licensees Prior written Consent contrary to Section 99 (I) (m) of the [Petroleum Act](#).
  - II. Transporting Liquefied Petroleum Gas without a valid license from the Energy & Petroleum Regulatory Authority Contrary to regulation 4(1),(2) and 17 (1) ,(3) of the Petroleum Liquefied Petroleum gas regulations 2019 as read with Section 101 of the [Petroleum Act](#) .
  - III. Supplying to the Market Filled LPG Cylinders without seals contrary to Regulations 14 (j) of the Petroleum Liquefied petroleum regulations 2019 as read with the 5<sup>th</sup> Schedule of the regulations and Section 101 of the [Petroleum Act](#) of 2019.
5. The Accused is appeal in Nairobi High Court Criminal Appeal No. E106 of 2023 was allowed and he was acquitted on 24/2/2025
6. The Applicant urges that the Trial Court did not make a finding on the vehicle and the assorted LPG Gas cylinders. That he is the registered owner of the subject motor vehicle and that he was not arrested or charged with any offence. That the LPG gas is owned by Jaymo Gas Supplies. He relies on the properties as tools of trade to meet his basic needs.
7. That the Director of Criminal Investigations declines to release the vehicles and assorted LPG Cylinders without a court order instructing them.
8. The Applicant filed his supporting affidavit. He annexed the copy of Motor Vehicle search and the Search Certificates and Petroleum Business License LPG as JKM 4,5 and 6 . He also annexed copy of the judgment of the trial court and the High Court Appeal as JKM (2) and (3).
9. His case is that the Trial Court did not make any finding on the motor vehicle and LPG gas cylinders which were produced as exhibits but kept at the DCI Headquarters.
10. That the Accused does not have any proprietary interest in the motor vehicle.

### **Replying Affidavit**

11. The Applicant's application was opposed by the prosecution through the replying affidavit of No. 77428 CPL Pauline Wambuku from DCI Parklands.
12. The Prosecution contends that the LPG cylinders should remain with the person brand owner as per provision of Regulation 26 (1) of the Liquefied Petroleum Gas Regulations of 2019 LN 100 OF 2019.
13. That the Applicant has attached a Business Licence LPG marked which expired on 20/12/2022 and thus has no valid license to retail on the LPG cylinders.
14. That the Complainant in the Criminal Case No E970/2021 are the registered brand owners in the branded cylinders as per attached Certificates of Trademarks annexed as PW-2 on the affidavit.
15. The prosecution accedes the court's jurisdiction to determine the application.

### **Interested Party's Application**

16. Petroleum Institute of East Africa filed an application dated 25/4/2025. The interested party seeks joinder and further orders that the assorted LPG Gas cylinders namely:
  - a. 108 -6 kg Pro gas cylinder ,2-13 kg Pro gas 4-6 Kg Kgas cylinder , 2-6kg Total gas cylinders , 1-6 kg Lake gas and 1-6 kg Hashi gas be released to the interested party.



- b. That the supporting affidavit of Wanjiku Manyara be deemed as the replying affidavit to the applicant's motion 20/3/2025.
17. The interested party's application is brought under Section 177 of the Criminal Procedure Code and Sections 4,9,16,19 & 20 of the *Victim Protection Act* of 2015 , Section 99 (1) (m) of the *Petroleum Act* and Regulation 26 of the Petroleum Liquefied petroleum Gas Regulations 2019.
  18. The application is brought on grounds that the interested party is the umbrella body comprising various players in the Energy Sector .The interested party holds special power of attorney of its members in LPG subsector and protects its member's rights.
  19. That the complainants are registered proprietors of the branded LPG gas cylinders and are victims of the case. The interested party is the main complainant.
  20. The interested party contends that the applicant's license expired at the time of arrest and did not have a license allowing him to retail in the subject LPG gas cylinders.
  21. That the interested party has demonstrated their interest in the assorted LPG cylinders and that the gas cylinders be released to the members to prevent absurdity in the law.
  22. The depositions in support of the application are that, the regulations 2019 recognize that every brand owner has a substantial investment in procuring the LPG cylinder which runs into tens of, millions shillings.
  23. The brand owner in making huge investment has a legitimate business expectation that they will exploit their investment in the business by refilling the cylinder.
  24. The regulations facilitate a legal stable fair free competition, market environment LPG business where owners are able to recoup their investment.
  25. The accused was arrested with 118 pieces of assorted LPG cylinders belonging to Petroleum Institute of East Africa membership.
  26. That the interested party were not informed of the acquittal despite being complainants in the trial.
  27. That any person dealing with the LPG gas cylinders must get authorization of the members/ brand owners.
  28. The interested party has annexed the special powers of attorney executed between the interested party and the members listed in the application for joinder together with registered trademarks for brand names.
  29. Parties filed written submissions in the application.

### **Written Submissions.**

#### The Applicant's Submissions.

30. The applicant submits that release of the LPG gas cylinder to the interested party is not anchored in the *Energy Act* or *the Constitution*.
31. That Section 120 of the *Petroleum Act* provides for forfeiture of vehicle or aircraft or equipment used in commission of the offence.
32. That the state officers are permitted to act within the provisions of the law and the request is vide Application unlawful.



Section 362 of the Criminal Procedure Code bestows upon this Court the power to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court, It is therefore clear that the revisionary power is a power reposed on the Court in the exercise of the Court's Constitutional supervisory jurisdiction pursuant to Article 165(6) of *the Constitution*, it can be exercised upon a trigger by the parties before the trial Court or any other person or by the Court itself on own motion.

In the case of Wesley Kiptui Rutto & Another Vs. Republic (2017) eKLR the court stated:

“I find that the revisionary jurisdiction exists in cases of all orders, interlocutory or final, of the subordinate court, save that an order of acquittal may not be revised to an order of conviction. Moreover, the Court may exercise its jurisdiction to revise an order sua moto, despite existence and or exercise of right of appeal by the party who brings the matter requiring revision to the attention of the court by application for revision or otherwise. This was the holding of H.M. Supreme Court of Kenya (Rudd. Ag. CJ., Connell and Pelly Murphy. JJ.) in R. v. Ajit Singh S/0 Vir Singh [1957] EA 822, 824...”.

33. That absence of express legislation or provision will not be interpreted as authorizing interference with the constitutional rights of a person. Republic -Vs- Director of Civil Registration Services exparte Simon John Gathienya (2018) eKLR .
34. The applicant urges that state organs are obliged to ensure human rights are respected and observe and that limitation of enjoyment of any right on basis of Article 27 (4) of *the Constitution* .
35. He relied on the subject vehicle and LPG cylinders to sustain his livelihood and failing to release them to him is direct deprivation of his social economic rights.
36. That the revisionary power is imposed on the court in exercise of constitutional supervisory jurisdiction. The applicant refers to the case of Wesley Kiptui Ruto Another –Vs- Republic (2017) eKLR on the court's jurisdiction.

#### **The Prosecution's Submissions.**

37. The prosecution filed submissions dated 27/6/2025 and contend that the LPG cylinders subject to the application are the properties of the interested party's members .The applicant must get authorization as per Section 26 (1) of the Constitutions provides that:

“ A cylinder shall remain the property of the brand owner and a consumer shall pay a cylinder deposit where the liquefied petroleum gas consumer does not provide an empty cylinder is exchange during the purchase of liquefied petroleum gas in cylinders. “

Section 2 a of the said regulations defines a brand owner as the registered owner of a cylinder.

38. Further that the accused was arrested on 2/9/2021 while the licenses were issued on 21/12/2021. The prosecution urges that at time of arrest the applicant did not have a valid license to deal with the LPG gas cylinder.

#### **The Interested Party's Submissions.**

39. It is submitted that the brand owners permanent marks appears on the LPG gas cylinders and is presumed the owner of the gas cylinders irrespective of the custodial .



40. That the LPG gas cylinders are dangerous, brand owner permanent mark appears on LPG gas is the presumed owner irrespective of the custodian
41. That LPG is dangerous and a highly volatile and potentially dangerous commodity and should be handled with care.
42. Regulation 34 (1) bestows the brand owner obligation to ensure refill and compliance with quality and safety standards.
43. That the LPG is in police custody since September 2021 and the quality is not guaranteed. The capacity and the obligation is on the brand owners who take public liability and insurance in case of 3<sup>rd</sup> party claim resulting from defective LPG.
44. It is their case that the brand owners' stand prejudiced if the applicant's application is allowed.
45. Further that the applicant has not demonstrated lawful ownership of the LPG.
46. The applicant not demonstrated lawful ownership or that it is a brand owner of the subject LPG cylinders.

### **Analysis & Determination.**

47. I have considered the application and the responses filed by the prosecution and the interested party. The parties submission filed as summarized above.
48. Parties have also referred Court to the appeal against the Trial Court's decision where the accused was acquitted in High Court Criminal Appeal No. E106 of 2023 vide Judgment of 24/2/2025.
49. The issue for determination is whether the court can exercise revisionary power in the matter.
50. Section 362 of the Criminal Procedure code refers to the High courts statutory power of revision provides.

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

51. Section 364 of CPC refers to the Powers of High Court on revision, subsection 5 provides for measures to be taken where an appeal lies in an order.
  - (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
52. The applicant refers the court to the case of where the Section 364 (5) was in issue. The court referred to Wesley Kiptui Ruto Another –Vs- Republic (2017) EKLK and the finding that the revision power can be exercised where an appeal lies but has not been preferred.
53. That provision does not prevent the court from rectifying errors. In this case, the circumstances are that the subordinate decision has already been subjected to the appeal process which was finalized.
54. This court in Nairobi High Court Criminal Appeal No.E106 of 2023 exercised its power and pronounced itself on the legality of the Trial court's judgment. The Criminal Provides Code provides for two avenues of grievance either through section 362 on revision or section 367 on appeal. The two



cannot run parallel and the High court cannot revise its own decision but ceases to have jurisdiction after it has rendered itself on the trial court's decision.

55. This Court considers that the trial Court's judgment and sentence of 2/3/2023 respectively, no orders as to release withholding of exhibits order was granted.

The Trial Court granted 14 days of appeal and was on point not to determine the question or issue of exhibits until right of appeal is exhausted. Therefore, even if this Court was to exercise revisionary powers under Section 362 of CPC, there is no finding or order with regard to exhibits release or otherwise to be considered on its legality correctness propriety.

The Trial Court was on point as Article 50 (2) (q) of Constitution provides;

If convicted, to appeal to, or apply for review by higher court as prescribed by law that the aggrieved party was entitled to exercise right of appeal.

56. Article 165 (6) & (7) of *the Constitution* also refers to the supervisory power of the court with further mandate to make orders of fairness and administration of justice.

57. Under the circumstances the revisionary power under Section 362 of the Criminal Procedure Code cannot be invoked.

58. The Trial Court record CMCC 970 OF 2021 has been brought to this court. From the proceedings, the court sentenced the accused to a fine of Ksh 10 Million shillings and in default to serve jail term of 5 years on the first and second count. The accused was discharged under Section 35 of the Penal Code on the third count. No directions were issued with regard to the exhibits produced during trial.

59. Further the convictions related to offences under the *Petroleum Act* of 2019 and its subsidiary Regulations which require forfeiture of any vehicle or equipment used in crime commission.

60. Section 120 of the Act provides that

“Where a person is convicted of an offence under this Act, in addition to any other penalty imposed, an order shall be made—

- a. for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence;
- b. for the forfeiture of petroleum recovered in the course of the commission of the offence;
- c. for the payment by that person to the national government of an amount equal to the proceeds of the sale of the petroleum so received; or
- d. for the payment by that person to the national government of the value at the wellhead, assessed by the court in respect of the quantity recovered or for the payment of such a part of that amount as the court, having regard to all the circumstances, deems fit.”

61. The trial court did not make the requisite orders. Section 121 of the Criminal procedure code refers to the trial court's power to detain property pending a criminal trial or appeal.

62. Providing that :-

Detention of Property seized.



1. 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.
  2. 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.
  3. 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.
63. Section 177 of the Criminal Procedure Code also refers to the Trial Court’s power to make relevant orders relating to restoration of property taken from an accused at the time of apprehension.

64. Providing that:-

Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

- a. That the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or
- b. That the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

65. Section 177 & 178(4) CPC Provides:

Section 178(4) - The operation of an order under this section shall (unless the court before which the conviction takes place directs to the contrary in any case in which the title to the property is not in dispute) be suspended— (a) in any case, until the time for appeal has elapsed; and (b) in a case where an appeal is lodged, until the determination of the appeal and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

66. Therefore, the Trial Court complied with Constitutional & Legislative Provision. Now that the appeal is heard and determined the exhibits presented during trial, the Trial Court ought to now make orders of release, restitution or forfeiture after hearing the rival submission by the parties to the instant application.

67. Suffice, the law grants the Trial Court original jurisdiction over exhibits produced before it during trial, while retaining them pending appeal, it is incumbent that it is the appropriate forum to hear and determine the question of ownership release or forfeiture of the exhibits thereafter. The Trial Court conducts forfeiture proceedings and resolves 3<sup>rd</sup> party claims on property such as represented by the interested party in these revision proceedings. Relevant orders and directions have not been taken yet to enable this Court resort to revision. Also, exhibits are still under the custody of the Trial Court and under the law, the Trial Court is the appropriate Court to determine the instant application on release of exhibits and Interested party’s claim first before this court exercises revisionary jurisdiction if need be.

## Disposition

68. I find that the application for revision cannot be allowed and is struck out for want of jurisdiction.



69. The interested party's Application to be filed heard and determined by Trial Court/CM Court on issue of release or forfeiture of exhibits.

**RULING DELIVERED DATED & SIGNED IN OPEN COURTCRIMINAL DIVISION HIGH COURT MILIMANI ON 9/10/2025 VIRTUALLY/PHYSICALLY.**

**M.W.MUIGAI**

**JUDGE**

