

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL REVISION NO. E070 OF 2025**

THE REPUBLIC THRO'

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS.....1<sup>ST</sup>  
APPLICANT

DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup>  
APPLICANT

VERSUS

SARAH WACHERA KUTYAKI.....1<sup>ST</sup>  
RESPONDENT

JAMES KINYANJUI MWAURA.....2<sup>ND</sup>  
RESPONDENT

**RULING**

1. The Applicants moved the Court by way vide Notice of Motion dated 15<sup>th</sup> May 2025 pursuant to Articles 159(1), 165(3)(a), 165(6) and (7) of the Constitution of Kenya, 2010, Sections 362, 364(1)(b), and 365 of the Criminal Procedure Code, and all other enabling provisions of the law. The applicant sought an order to set aside the orders issued on 5<sup>th</sup> February 2024 releasing motor vehicle registration number DZ8293 Ford Ranger to the 2<sup>nd</sup> respondent.
2. The application is supported by an affidavit sworn by Robert Mutuma, a Prosecution Counsel in the Office of the Director of Public Prosecutions. He avers that the impugned orders were brought to the attention of his office in March 2024 by Police Constable Eric Ruto of the Directorate of Criminal Investigations. The said motor vehicle, a Ford Ranger registration number

D28293, had been reported stolen in South Africa and flagged in the Interpol database. It is alleged that the vehicle was irregularly released without affording the Applicants an opportunity to be heard. The release orders were granted in the absence of the original trial court file, which had been reported missing at the time. The proceedings are therefore said to have been irregular, procedurally unfair, and contrary to the principles of natural justice.

3. It is further contended that the matter was heard on a date not scheduled for hearing, and no explanation was recorded as to why the application was taken out earlier than directed. The 1st Applicant, being in possession of the motor vehicle, did not participate in those proceedings and was denied an opportunity to be heard, as there is no record showing that the application dated 16 January 2024 was served upon it.
4. The Applicants maintain that investigations into the motor vehicle were conducted by officers from the Directorate of Criminal Investigations, and the results obtained from the National Transport and Safety Authority confirmed that the vehicle does not exist in their database. Similar findings were obtained from the Kenya Revenue Authority, which indicated that no such vehicle was registered in its records. The Interpol database also reflects that the said vehicle remains listed as stolen in South Africa, as deponed by P.C. No. 77120 Eric Ruto in his replying affidavit.
5. The Applicants argue that they ought to have been given an opportunity to present this information before the trial court prior to any decision being made on whether the release of the vehicle

to the Respondents was in the interest of justice. It is deponed that the subject motor vehicle was part of MCCR E1045 of 2019, Republic v. Natalia Kuyaki alias Mbogo, the case from which the current application arose. The said Natalia Kuyaki, who had been charged in that matter, is now deceased, and a death certificate was presented before the trial court, resulting in the withdrawal of the case under section 87(a) of the Criminal Procedure Code.

6. It is further contended that the Respondents who sought the release of the vehicle were not parties to the criminal proceedings and had no locus standi to file such an application. They also failed to produce letters of administration to demonstrate authority to deal with the estate of the deceased, nor did they provide proof of ownership of the vehicle. Consequently, the Applicants urge that the orders of the lower court were improperly issued and that this Honourable Court should exercise its supervisory jurisdiction to review their legality and propriety.
7. In response, the 1st Respondent explained that the application dated 16th January 2024, which resulted in the impugned orders, had been duly filed through the online filing portal under certificate of urgency. It was placed before Honourable I. Kahuya sitting in Court No. 6, where the prosecutor representing both the Director of Public Prosecutions (DPP) and the Directorate of Criminal Investigations (DCI) acknowledged service. The court directed the prosecution to file a replying affidavit by the close of business on 19th January 2024.
8. The matter was thereafter fixed for inter partes hearing on 22nd January 2024 before Honourable C. Njagi in Court No. 7. However, the hearing could not proceed as the magistrate required to

peruse the original record in Kibera Criminal Case No. 1045 of 2019, Republic v. Natali Kuiyaki. Since the file was missing from the registry, the hearing was adjourned to 30th January 2024 and later to 22nd February 2024 to allow for its tracing.

9. Following this development, the 1st Respondent's advocates wrote to the Chief Magistrate on 30th January 2024 seeking assistance to trace the file. Once it was located, they wrote again on 2nd February 2024 to the Executive Officer requesting the matter to be listed for hearing. The case was subsequently scheduled for 5th February 2024. On that date, the prosecution indicated that it would not object to the application on condition that the Respondent produced her marriage certificate. Upon production of the certificate, the court allowed the application without objection from the prosecution.
10. The 1st Respondent refuted the DPP's later claim that its office only became aware of the court orders in March 2024, describing the assertion as false and misleading. She argued that the statement unjustly cast doubt on the integrity of the judicial officer and the State Counsel who participated in the hearing. She maintained that government agencies prosecute cases through the Office of the DPP, and the counsel appearing in court act on behalf of their clients. It was therefore inconceivable, she said, for a prosecutor who had been present in court to later allege that their client was denied a hearing. The DPP had, in fact, been directed to respond by 19th January 2024, and any suggestion that it was not given an opportunity to be heard was baseless.
11. She further explained that the subject vehicle had been imported on 21st December 2018 and detained by police a day

later, along with its importation documents. Since then, the police had retained both the vehicle and its documents, preventing its registration and the payment of import duties. The Respondent argued that the continued detention of the vehicle on that basis was unlawful and that once released, the lawful owner would meet all registration and tax obligations in accordance with the Traffic Act and the East African Community Customs Management Act.

12. The Respondent described the Interpol complaint report as malicious and baseless, pointing out that if it had been genuine, investigations would have been concluded during the five years of detention. She also produced her marriage certificate confirming her marriage to the late Natali Kuyiki and clarified that she made no claim to the vehicle, which belonged to the deceased. Having completed administration of the deceased's estate, she stated that succession proceedings were unnecessary since the vehicle was never registered in his name.
13. She further observed that succession matters fall within the civil jurisdiction of the court under the Law of Succession Act, and the DPP's involvement arises only where a criminal offence is alleged. The question of ownership, she emphasised, was purely civil in nature.
14. The Respondent concluded that the application was motivated by ulterior motives, noting that the vehicle had been detained long before any charges were preferred and had since deteriorated while in police custody. She accused the DPP of concealing the fact that the vehicle had been advertised for auction as unclaimed property, despite its earlier participation in

proceedings concerning its release. She urged the court to dismiss the application, arguing that the prolonged detention of the vehicle without a lawful order or prosecution contravened Article 40 of the Constitution, amounting to unlawful deprivation of property and abuse of authority.

15. The Application was canvassed by way of written submissions which have been duly considered and there is no need to rehash them. The issue for consideration, is whether this court should grant the revisionary orders sought.
16. The power of this court in its revisionary jurisdiction is founded under Section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya which provides that:

**The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.**

17. Consequently, this court has jurisdiction to entertain the application before me. In the instant application, the applicants sought the revision of orders made by the trial court releasing motor vehicle, a Ford Ranger registration number D28293 to the respondents. In such applications, the onus lies on the applicant to demonstrate that the trial magistrate acted unlawfully, improperly, irregularly, or committed an error in the impugned decision or order.
18. The first complainant raised by the applicants was that they were never given an opportunity to be heard. From the record of

the trial court, the application dated 16th January 2024 was filed under certificate of urgency and placed before Honourable I. Kahuya, where the prosecution, representing both the DPP and the DCI, acknowledged service. The court directed the prosecution to file a replying affidavit by 19th January 2024.

19. Subsequently, when the matter came before Honourable C. Njagi on 22nd January 2024, it was deferred to allow the court to peruse the original file in **Republic v. Natali Kuyiki**, which was temporarily missing. Once the file was traced, the matter was listed for hearing on 5th February 2024. On the hearing date, the prosecution was represented by Ms. Achieng, who indicated to the court that she was not opposed to the application. The court granted the orders without objection.

20. This sequence of events demonstrates that the prosecution was fully aware of the proceedings, had adequate notice, and was afforded both procedural and substantive opportunity to be heard. The prosecution's express statement of no opposition on record, made by counsel present in court, constituted active participation and a considered position on behalf of the applicants. It would therefore be inaccurate to claim that the applicants were denied a hearing when, in fact, they exercised their right to participate but chose not to contest the application. The court's decision was thus made within a fair and transparent process that complied with the requirements of natural justice.

21. The second issue for determination is whether the decision of the trial court was sound in light of the surrounding circumstances. The court's revisionary jurisdiction indeed extends to examining the legality, propriety, and regularity of the

proceedings that gave rise to the impugned orders. It must therefore consider whether the trial court exercised its discretion properly and in accordance with established legal procedure.

22. From the record, the 1st Respondent stated that during the hearing of the application, the prosecution only required her to produce a marriage certificate to confirm that she was the lawful wife of the late Natali Kuyaki. Upon producing the certificate, the court proceeded to grant the release orders. The record further indicates that the motor vehicle in question had been confiscated from the said Natali Kuyaki, now deceased, who was the subject of Kibera Criminal Case No. 1045 of 2019. Following his death, the criminal proceedings were withdrawn under section 87(a) of the Criminal Procedure Code. However, the respondents, who later applied for the release of the vehicle, were not parties to that criminal case and therefore lacked the requisite legal standing to move the court in respect of property forming part of the deceased's estate.
23. Ordinarily, where a dispute arises over property that was in possession of a deceased person, or property alleged to be linked to the deceased, the proper legal procedure is governed by the Law of Succession Act. Section 79 of the Act vests all the property of a deceased person in the personal representative, while section 82 outlines the powers of such a representative to sue or be sued on behalf of the estate.
24. It follows that no person may deal with or claim any interest in the estate of a deceased individual without first obtaining a grant of representation. The respondents, therefore, could not lawfully seek the release of the motor vehicle without demonstrating that

they had been appointed as administrators or executors of the estate. The court record does not show that they possessed any such letters of administration or that any succession proceedings had been initiated. Their failure to obtain a grant meant that they lacked the legal standing to handle or recover property alleged to belong to the deceased.

25. In addition, the respondents did not produce any documentary proof of ownership or entitlement to the vehicle. The police and the investigative authorities had indicated that the vehicle was the subject of an active inquiry, having been reported stolen in South Africa and flagged by Interpol. In such circumstances, the trial court was under a duty to exercise caution and ensure that any release orders were supported by verified ownership documents and grounded in a lawful claim. The court's decision to rely solely on the production of a marriage certificate, without verifying the legal capacity of the applicant or resolving the ownership question, was a procedural misstep and a clear departure from established legal practice.

26. It is therefore evident that the trial court erred in entertaining and allowing an application brought by persons without the requisite legal authority or evidence of ownership. The respondents had no locus standi to institute the application, and the process adopted for the release of the vehicle was irregular and contrary to law. The absence of letters of administration, coupled with the unresolved question of ownership and the ongoing investigation into the vehicle's status, rendered the release order premature and legally unsound.

27. Consequently, the decision of the trial court cannot be said to have been sound in law or consistent with due process. In the premises, the application dated 15<sup>th</sup> May 2025 is allowed. The orders issued by the trial court on 5<sup>th</sup> February 2024, releasing motor vehicle, registration number D28293 Ford Ranger to the 2<sup>nd</sup> respondent is hereby vacated.

Orders accordingly.

**Rulings dated and delivered virtually this 21<sup>st</sup> day of  
October 2025**

**D. KAVEDZA  
JUDGE**

**In the presence of:**

Mr. Mutuma for the Applicants  
Mr. Mwangi for the Respondent  
Ms. Karimi Court Assistant.