



**Ngeta v Director of Public Prosecutions & another (Criminal Miscellaneous Application E207 & E283 of 2024 (Consolidated)) [2025] KEMC 6 (KLR) (2 January 2025) (Ruling)**

Neutral citation: [2025] KEMC 6 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CRIMINAL MISCELLANEOUS APPLICATION E207 & E283 OF 2024 (CONSOLIDATED)  
PA NDEGE, SPM  
JANUARY 2, 2025**

**BETWEEN**

**ALFRED WETUNDE NGETA ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**KENYA WILDLIFE SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The matter herein, makes reference to 2 applications, i.e. E207 of 2024 filed by Alfred Wetunde Ngeta and E283 of 2024 filed by Shem Mogaka Kebira, both against the respondents herein, Director of Public Prosecutions and Kenya Forest Service. The applications are dated 03<sup>rd</sup> April 2024 and 14<sup>th</sup> May 2024, respectively, and subsequently filed on the 03<sup>rd</sup> day of April 2024 and 15<sup>th</sup> May 2024, respectively.
2. In the application dated 03/04/2024, the applicant therein is praying for an order of this Honorable Court to release the applicant's goods in form of 80 bags of Charcoal being held at the Kenya Forest Service Station – Nakuru and or any other authority, to the applicant; while in the application dated 14/05/2024, the Applicant therein is praying to have the motor vehicle, registration number KDA 075W currently being held at the Kenya Forest Service Offices – Nakuru and or any other authority be released to the applicant. The applications are mainly premised on the fact that the criminal case that involved the items as exhibits was withdrawn under section 87(a) of the Criminal Procedure Code. That as such there are no valid reasons or grounds for the continued detention of the two items.
3. It is true that the items in question, i.e. the bags of charcoal and the motor vehicle have been in detention, courtesy of the Respondents, subject to the hearing and determination of the Criminal Case E1248 of 2023 which has since been withdrawn. However whereas I find evidence adduced that the applicant in E283 of 2024 is the owner of the motor vehicle herein, I find no evidence that the applicant in E207 of 2024 is the owner of the bags of charcoal as claimed.



4. There are however Replying Affidavits from No 111057 PC Kevin Wanjama, the investigating officer herein, that the items sought herein form part of their exhibits and are in the custody of Kenya Forest Service and were never produced in court as exhibits, and as such, the court has no jurisdiction on the same. There was no response from the applicants.
5. I do agree that exhibits can only be released to proven owners and it is not the function of this court to promote disputes by releasing exhibits to unproven owners or anyone who has not proved that he is entitled to it. The provisions of Section 177 of the Criminal Procedure Code provide 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.
6. It is thus clear from the above provisions that no order restoring the subject bags of charcoal can be made before the court established who is entitled to them. It is the parties herein, more so the applicant, who has the burden of adducing evidence that is sufficient to guide the court as to who is entitled to the subject exhibit. Any order made without the ascertainment of the ownership thereof, as held by Justice Mutende in the case of *Madegwa v Republic & 4 others* [2023] KEHC 18163 (KLR) (Crim) shall amount to an abuse of court process.
  7. Secondly, there was a contention from the respondent that the motor vehicle and even the bags of charcoal are intended to be used as an exhibit in a criminal case that they intend to re-lodge, as there was no bar to them recharging the accused persons in the criminal case that was withdrawn afresh. In the case of *Republic v Everlyne Wamuyu Ngumo* (2016) eKLR it was held that:

I find that the trial court was not entitled to direct that the motor vehicle be released to the respondent/accused in order as the court put it, “to save it from wear and tear due to immobilization of the engine. The reason for this is that the motor vehicle has not been produced as an exhibit. It is only when some property including a motor vehicle have been produced as an exhibit in court that that court is then seized with the jurisdiction to order for its disposal. (Emphasis mine.)

8. The decision is binding and is yet to be overturned on appeal. It shall therefore be an irregularity on the part of this court to order the release of such an exhibit, even when its ownership would have been established. This court cannot grant the release of a motor vehicle or the bags of charcoal, exhibits that were to be preserved prior to being produced in evidence. This court does not have power to release an exhibit it is not in control/possession of. The upshot of the above is that the applications lack merit and are accordingly hereby dismissed.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS/  
PHYSICALLY AT NAKURU THIS 02<sup>ND</sup> DAY OF JANUARY, 2025.**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**



**In the presence of:**

Court interpreter: Justin

Prosecution Counsel: N/A

Accused:

Applicant: Bor h/b Mwangi for the applicant

Bor: Seeking leave to appeal.

CT: Leave to appeal within 14 days granted.

