



**Republic v Njoroge (Criminal Case E2521 of 2024)
[2025] KEMC 65 (KLR) (2 January 2025) (Ruling)**

Neutral citation: [2025] KEMC 65 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E2521 OF 2024
PA NDEGE, SPM
JANUARY 2, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH NJOROGE ACCUSED

RULING

1. I have gone through the copy of the log book provided. I do hereby find that the accused person herein is not the owner of the vehicle herein. I thus do hereby exercise my discretion and find that the fine sentence imposed herein is sufficient and therefore decline to forfeit the vehicle herein.
2. The vehicle is however not under the custody of court at the moment I am aware that a court has jurisdiction to restore property to an individual it believes to be entitled to it, vide section 177 (c) of the *Criminal Procedure Code*. However, the question begging would be, under what circumstances the property should be released? Procedurally, for an exhibit to form part of evidence, it has to be presented for purposes of identification so that the court inspects it prior to be admitted or not depending on its legality. Prior to presentation in court, all evidence to be used during trial must be preserved. This duty that is bestowed upon the investigator of a case is for the purpose of due process and fair trial. Evidence herein is clear that if motor vehicle herein was detained following investigation carried out. I am bound by the decision in the case of *Elijah Nyakebondo v Republic* (2017) eKLR and *Republic v Everline Wamuyu Nguro* (2016) eKLR where it was held that until property or properties are produced before subordinate courts as exhibits, the court will not have jurisdiction to order release of the same.
3. Thus a motor vehicle that has been seized and is not presented before court, such as the instant case, cannot be restored to the lawful owner by an order of this court unless the vehicle is identified, adduced in evidence and following discharge of proof and the relevant law in question. A court of law would not be expected to pry into the prosecution’s case unless the same is legally and or procedurally presented within the confines of the law.



4. I thus hereby lacks the jurisdiction or power or legal mandate to order the release of the vehicle herein to the applicant in the miscellaneous cause herein and I do therefore hereby dismiss the application herein.
5. Accused person herein to pay the fine as ordered or serve a default sentence as no other sentence is pending. Both causes herein are therefore marked as closed.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 2ND DAY OF JANUARY, 2025.

HON. A. NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of

Court Assistant

N/A for prosecution

N/A for applicant

Accused person present

HON. A. NDEGE

SENIOR PRINCIPAL MAGISTRATE

2ND JANUARY 2025

