



**Wekesa v Kenya Wildlife Service & another (Criminal Case E946 of 2024) [2024] KEMC 70 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEMC 70 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CRIMINAL CASE E946 OF 2024  
PA NDEGE, SPM  
OCTOBER 22, 2024**

**BETWEEN**

**DANIEK WEKESA ..... APPLICANT**

**AND**

**KENYA WILDLIFE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The matter herein, makes reference to an application filed by the Applicant, Daniel Wekesa, dated 11<sup>th</sup> September 2024, subsequently filed on the 12<sup>th</sup> day of September 2024. The application is premised on the desire of the Applicant herein, to have the motor cycle, registration number KMFV 631 W BOXER BLACK in color and capacity of 150cc to be released to him as the registered owner on such terms as the court may deem just in regard to the present case.
2. The motor cycle in question, registration number KMFV 631 W BOXER BLACK, has been in detention, courtesy of the Respondents, subject to the hearing and determination of the Criminal Case herein, before this Honorable court. However as correctly submitted by the learned prosecution counsel herein. Ms. Angeline Chinga, in her oral submissions in court, the applicant has not presented any evidence of his ownership of the motor cycle. Ownership of a registered motor vehicle or cycle as is the case herein is through the presentation of the Certificate of Registration or Ownership commonly referred to as the log book, which is lacking herein.
3. Thus from the outset, the application herein is a non-starter. 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.



4. The application is premised on the provisions of Section 177 of the *Criminal Procedure Code* which provides 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.
5. It is thus clear from the above provisions that no order restoring the subject motor-cycle can be made before the court established who is entitled to it. 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 Vrs Republic & 4 Others* [2023] KEHC 18163 (KLR) (CRIM) shall amount to an abuse of court process.
6. Secondly, there was a contention from the prosecution that the motor cycle is intended to be used as an exhibit in the criminal case herein. In the case of *Republic vrs 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.)

7. 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 cycle, an exhibit that was 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 application lacks merit and is accordingly hereby dismissed.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS/  
PHYSICALLY AT NAKURU THIS ...22<sup>ND</sup> .... DAY OF.....OCTOBER, 2024.**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the Presence Of:

Court interpreter: Janet

Prosecution Counsel: Chinga

Accused: Present

