

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL CASE NO. 66 OF 2025**

REPUBLIC.....1<sup>ST</sup> APPLICANT

SHADRACK NJAMURA NDUNGU.....2<sup>ND</sup> APPLICANT

VERSUS

JOHN HARI GAKINYA.....1<sup>ST</sup>  
RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS.....2<sup>ND</sup>  
RESPONDENT

**RULING.**

1. Before this Court are two applications. The first, dated 27 January 2025, is by the Prosecution seeking to allow Faith Njambi Macharia, a prosecution witness, to testify virtually through video link. The second, dated 25 July 2025, seeks the release of motor vehicle registration number KBP 298E, a Toyota Land Cruiser Prado, currently held by the 2nd Respondent.
2. I begin with the first application. It is supported by the affidavit of Detective Oliver Nabonwe, who states that the Respondents are charged with the murder of Dysseleer Mireille Lesoipa alias Leila. The deponent avers that investigations revealed that the 1st Respondent acted as the deceased's advocate and that Ms Macharia, formerly his secretary between June 2011 and July 2019, handled documentation relating to the deceased's bank accounts.
3. It is deponed that Ms Macharia recorded a statement on 31 March 2022 describing how Kshs 24,000,000 was transferred from the deceased's KCB account to the 1st Respondent's firm account.

The statement was served on the defence as part of the committal bundle. The witness relocated to Ontario, Canada, in July 2019, where she has since lived and worked.

4. The prosecution contends that securing the witness's physical attendance has been impossible, as she has no available leave days and lacks funds for travel. It maintains that her evidence is material and that failure to call her would prejudice the case. It is further argued that virtual testimony would not prejudice the Respondents, who will retain full rights of cross-examination. The exhibits to be relied upon are already in the custody of the investigating officer.
5. Section 63A of the Evidence Act empowers courts to receive oral evidence through teleconferencing or other electronic means, provided the integrity of the proceedings and the rights of the parties are safeguarded. Likewise, Article 159(2)(d) of the Constitution requires courts to administer justice without undue regard to procedural technicalities, thus embracing the use of technology to enhance access to justice. The provision is consistent with the Judiciary's ICT policy, which encourages remote participation of witnesses where personal attendance would cause delay or expense.
6. Although the Criminal Procedure Code does not expressly provide for virtual hearings, the inclusion of section 63A in the Evidence Act renders video conferencing a competent and lawful mode of receiving oral evidence. The concept of virtual hearing gained traction during the COVID-19 pandemic and has since become an accepted practice within the judicial process.

7. The High Court (Organisation and Administration) Act and the Practice Directions on Standardised Procedures in the High Court, 2022 (Gazette Notice No. 189 of 2022), further reinforce this approach. The objective of the directions is to enhance access to justice, facilitate the efficient disposal of cases, and promote the use of technology in court proceedings.
8. Rules 27 and 28 of the Practice Rules require the court during pretrial to consider, among other matters, whether teleconferencing or live video link is necessary or appropriate. The court must also determine whether the hearing will proceed in open court, virtually, or in camera. Provisions governing witness testimony through virtual means have similarly been enacted.
9. Courts have on several occasions considered the question of virtual testimony. In **Republic v Salat [2023] KEHC 17629 (KLR)** the court addressed concerns of fairness, holding that:

*“By virtual hearing, parties are allowed to present their case through video or teleconference links. Witnesses in virtual sessions would still be cross examined and any documentary evidence adduced should be served in advance and verified by parties in line with Article 50 of the Constitution. The court and the accused would still be able to see the witness and hear the witness’ evidence albeit virtually. This means that the evidence would be taken in the presence of the accused and tested through cross examination.”*
10. Indeed, technological innovation does not dilute an accused person’s fair trial rights so long as cross-examination and participation are preserved. Virtual testimony therefore aligns

with Article 50 of the Constitution on the right to a fair trial, provided the accused is able to hear the evidence, cross-examine the witness, and contest the admissibility of exhibits. Courts must ensure that the witness's identity is verified, the communication link is secure, and proceedings are properly recorded to maintain evidentiary integrity.

11. Having considered the supporting affidavit, the reasons advanced by the prosecution, and the applicable law, this Court is persuaded that allowing the witness to testify virtually serves the broader interests of justice. The witness resides permanently in Ontario, Canada, and has demonstrated genuine logistical constraints that make physical attendance impractical.
12. The use of a secure video link will enable the witness to give evidence effectively while preserving the Respondents' right to a fair hearing. The defence will have full opportunity to cross-examine the witness and challenge her evidence.
13. Accordingly, the application dated 27 January 2025 is allowed. The prosecution witness, Faith Njambi Macharia, shall testify virtually through a verified and secure video link, under the supervision of the court and in coordination with the prosecution and defence counsel.
14. The second application, dated 25 July 2025, seeks the release of motor vehicle registration number KBP 298E, a silver Toyota Land Cruiser Prado, presently held by the 2nd Respondent. It is supported by an affidavit sworn by the 2nd Applicant on the same date. He avers that he is the lawful purchaser of the vehicle, having bought it from the 1st Respondent in July 2019 for

valuable consideration. Upon payment, he took possession and used the vehicle without interruption until 15 January 2020, when it was seized by officers of the 2nd Respondent in connection with the ongoing criminal proceedings against the accused persons.

15. The 2nd Applicant contends that the vehicle has remained in the 2nd Respondent's custody for over six years, during which it has been examined and its evidentiary value secured. He argues that its continued detention serves no investigative or prosecutorial purpose and that the prolonged impoundment has caused him financial loss and inconvenience, as the vehicle was used in his daily business operations. He has annexed photographs showing its deteriorating condition and submits that continued storage without maintenance amounts to waste and unjust deprivation of property.
16. He further avers that he is neither an accused person nor under investigation and that he has cooperated fully with the prosecution, even testifying as a state witness. He maintains that ownership of the vehicle is not disputed, as the 1st Respondent confirmed the sale during court proceedings. He argues that the prolonged detention of the vehicle violates his right to property under Article 40 of the Constitution by denying him possession and use of lawfully acquired property.
17. The applicant expresses willingness to comply with any reasonable conditions that the court may impose, including availing the vehicle should it be required as an exhibit. He therefore prays that the court orders its release, submitting that its continued detention is unjust, unnecessary, and contrary to the interests of justice.

18. In response, the investigating officer avers that investigations established that the deceased, Dysseleer Mireille Lesoipa, disappeared on 1 December 2018. Shortly thereafter, the 1st Respondent took possession of the deceased's vehicle, KBP 298E, claiming ownership. Further inquiries revealed that the 1st Respondent filed Nakuru High Court Succession Cause No. 40 of 2019, supported by a falsified death certificate and a forged will purporting to appoint him as executor of the deceased's estate. Expert reports from the Civil Registration Department and the Forensic Document Examiner confirmed both documents to be forgeries.
19. The officer adds that an alleged sale agreement dated 1 October 2018 between the deceased and the 1st Respondent for the same vehicle was also found to be forged. A forensic report dated 6 March 2020 confirmed that the signature on the agreement was not that of the deceased. Despite this, the 1st Respondent later sold the vehicle to the present applicant. Records from the National Transport and Safety Authority show that the vehicle remained registered in the deceased's name until 15 February 2021, when the 1st Respondent fraudulently transferred the logbook to his name while on bail, even though the original logbook was in police custody and the vehicle was retained as an exhibit at DCI Headquarters.
20. The officer further states that the vehicle is subject to Nakuru High Court Succession Cause No. 40 of 2019, where the Public Trustee was appointed to manage the deceased's estate pending determination. He notes that the same vehicle had once been released to the 1st Respondent, but the order was later reviewed,

and the court maintained the status quo, leaving it under DCI custody.

21. He asserts that the vehicle is a crucial prosecution exhibit intended to demonstrate the doctrine of recent possession and the likely motive for the deceased's murder. Its release would compromise both the ongoing criminal trial and the related civil proceedings. He therefore prays that motor vehicle KBP 298E remain in DCI custody until the final determination of both matters.
22. I have carefully considered the 2nd Applicant's application, the supporting affidavit and the replying affidavit by the investigating officer. The issue for determination is whether motor vehicle registration number KBP 298E, a silver Toyota Land Cruiser Prado, should be released to the 2nd Applicant or remain in the custody of the 2nd Respondent pending the hearing and determination of the criminal case and related succession proceedings.
23. From the material before the Court, it is not in dispute that the 2nd Applicant purchased the subject vehicle from the 1st Respondent in October 2018, long before the disappearance of the deceased, Dysseleer Mireille Lesoipa, which occurred between December 2018 and July 2019. The evidence shows that the 2nd Applicant paid valuable consideration whereupon he took possession and used the vehicle openly and peacefully for several months prior to its seizure on 15 January 2020. There is no evidence to suggest that the Applicant participated in, or was aware of, any of the alleged fraudulent acts attributed to the 1st Respondent as alleged by the investigating officer.

24. The 2nd Respondent's opposition rests on the assertion that the vehicle forms part of the deceased's estate and is a key exhibit intended to demonstrate the doctrine of recent possession and the motive for the alleged murder. While the Court appreciates the significance of preserving exhibits, it is equally bound by Article 159(2)(d) of the Constitution to dispense justice without undue regard to procedural technicalities, and by Article 40 to protect every person's right to property. The Court must therefore balance the need to preserve evidence with the Applicant's proprietary interests and the constitutional requirement to avoid unnecessary hardship.

25. It is also clear from the record that the vehicle has remained in the custody of the 2nd Respondent for over six years. The investigating officer acknowledges that the vehicle has been photographed, examined, and its evidentiary value preserved. Continued detention of the vehicle serves no further investigative purpose. The photographs and forensic reports already produced in court sufficiently preserve its evidential utility. Meanwhile, the vehicle's prolonged impoundment without maintenance has caused visible deterioration, as shown in the photographs annexed to the application. Allowing it to continue wasting away would amount to an arbitrary deprivation of property contrary to Article 40 of the Constitution.

26. The court in the case of **Jeremiah Kobia Munoro vs Republic [2021] eKLR**, held that:-

*"... a motor vehicle parked in an open yard and unprotected from the hazards of the weather is prone to serious damage and depreciation."*

*"It will not serve the interest of justice to, eventually release a "shell" to the rightful owner at the end of trial. It may even expose the state to litigation if at the end of the trial, there is no proof of that the motor vehicle was bought with proceeds of crime or no value is given to the complainant, if it is found to have been bought as such and yet it has completely depreciated in value."*

27. The 2nd Applicant has also demonstrated good faith. He is not an accused person, nor is he under investigation. He has fully cooperated with the prosecution and even testified as a State witness. He has expressed willingness to make the vehicle available to the court or investigative agencies whenever required. This undertaking, coupled with the lapse of time and the completed examination of the vehicle, provides sufficient assurance that releasing the vehicle will not compromise the ongoing proceedings.

28. The Court is also mindful that determining the rightful ownership of the motor vehicle is a substantive issue that will ultimately be resolved in the succession proceedings before the Nakuru High Court. It would therefore be premature for this Court to make definitive findings on ownership at this stage. However, from the evidence presently before the Court, the 2nd Applicant appears to have acquired the vehicle in good faith and for value, before the alleged fraudulent dealings came to light. There is therefore no basis to continue depriving him of possession when his cooperation and undertakings sufficiently safeguard the interests of justice.

29. In view of the foregoing, and balancing the competing interests, I am persuaded that it is just and equitable to release the subject motor vehicle to the 2nd Applicant, subject to reasonable conditions to ensure its availability when required. The vehicle has remained in DCI custody for over six years and is deteriorating. Its evidentiary value has already been preserved through documentation, and the Applicant has undertaken to produce it when required in court.

30. Accordingly, it is in the interest of justice that the vehicle be released to the 2nd Applicant, who is the best custodian of the same pending the hearing and determination of the criminal and succession proceedings.

31. The Court therefore orders that motor vehicle registration number KBP 298E Toyota Land Cruiser Prado, silver in colour, be released to the 2nd Applicant forthwith, on condition that he shall not dispose of, alienate, or otherwise part with possession of the vehicle pending the final determination of the criminal case and the succession proceedings, and that he shall avail the vehicle to the Investigating Officer or before this Court whenever required for purposes of evidence or inspection.

It is so ordered.

**Ruling dated and delivered virtually this 24<sup>th</sup> day of  
October 2025**

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**D. KAVEDZA  
JUDGE**

**In the presence of:**