



REPUBLIC OF KENYA



KENYA LAW
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DCI, Garissa Station v Mwangi; Wanjau (Interested Party) (Criminal Revision E123 of 2025) [2025] KEHC 17244 (KLR) (20 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E123 OF 2025
JN ONYIEGO, J
NOVEMBER 20, 2025**

BETWEEN

DCI, GARISSA STATION APPLICANT

AND

ANTHONY GITHUA MWANGI RESPONDENT

AND

LOISE WANJIKU WANJAU INTERESTED PARTY

(Being a revision application against the decision of Hon.T.Mwangi delivered on 16-19-2025 in Misc. No. E083 of 2025)

RULING

1. The applicant herein moved the trial court via an application dated 30.07.2025 seeking for the respondent to be remanded at Garissa Police station for a period of 14 days to enable the DCI Garissa to complete investigations.
2. The application was supported by the affidavit of No. 83191 Cpl. Alexander Nyamu who deposed that he was the investigating officer and that he was charged with the responsibility of investigating allegations against the respondent for being found in possession of ammunitions without firearm license contrary to section 89(1) of the Penal Code; being in possession of ammunition without a firearm certificate contrary to section 4(2) (a) as read with section 4(3)(a) of firearm Act 2012 and being found in possession of government stores contrary to section 324(3) of the Penal Code.
3. That it was reported that the respondent who worked at Lands Office possessed a pistol and used the same in threatening people. That the respondent was intercepted along Garissa Lamu Road on 28.07.2025 while driving motor vehicle registration number KDQ 876Y Toyota Prado black in colour. He averred that upon conducting search in the vehicle, they recovered the following items: three



live rounds of ammunitions, KDF badges of rank and questionable documents as per the attached inventory. The officers further conducted search in the suspect's house at Madogo and recovered five live ammunitions, 30 blank title deeds certificates and lease certificates. That it was the said allegations and recoveries that prompted the suspect to be booked vide OB Number 70/28/07/2025 pending further investigations.

4. The suspect/respondent who was arraigned before court did not object to the applicant's prayers. Consequently, he was released on a bond of Kshs 300,000/= or Cash Bail of 130,000/=. He was then directed to appear on 12-8-2025 to confirm completion of investigations. On the 12.08.2025, the matter came up in court and the applicant through the Director of Public Prosecution requested for a further 21 days to conclude investigations which the court granted and fixed the matter for mention on 3-9-2025.
5. On the other hand, the respondent implored the court to release the suit motor vehicle. The court directed the respondent to file a formal application to that effect thus prompting him to file an application dated 14.08.2025 seeking the following orders:
 - i. Spent.
 - ii. That this Honourable court be pleased to direct the applicant to take and keep photographic or any other evidence relating to motor vehicle registration number KDQ 876Y Toyota Prado, if in their opinion the suit m/vehicle's evidence will be necessary for any future action against the respondent.
 - iii. That upon grant of prayer 2 above, this Honourable Court be pleased to direct and/or order the applicant to forthwith release motor vehicle registration number KDQ 876Y Toyota Prado currently held at Garissa Police station to the Interested Party/applicant, Loise Wanjiku Wanjau or her husband Anthony Githua Mwangi the respondent herein within 3 days of this court's order.
 - iv. That costs of this application be provided for.
6. The application was supported by the affidavit sworn by the respondent on 14-08-2025 and another one sworn on the same date by his wife Loise Wanjiku Wanjau who averred that the motor vehicle in question was purchased by her from Okazaki motors limited vide a sale agreement dated 24-08-2024. She attached the said sale agreement as annexure LLW-1. She deposed that the respondent was her husband and that the said mv was being used by the respondent as her spouse.
7. Upon considering the application which was not opposed by the prosecution, the trial court allowed the same as prayed and made the following orders:
 - i. The applicant to take and keep photographic or any other evidence relating to motor vehicle registration number KDQ 876Y Toyota Prado, if in their opinion the suit vehicle's evidence will be necessary for any future action against the respondent.
 - ii. The applicant to forthwith release motor vehicle registration number KDQ 876Y Toyota Prado currently held at Garissa Police station to the Interested Party/applicant, Loise Wanjiku Wanjau and/or to her husband, Anthony Githua Mwangi within 3 days of the court's order.
 - iii. The mobile phones and tablets confiscated from the respondent be released to him
 - iv. Mention on 7-10-2025.



8. Being dissatisfied with the ruling of the trial court, the applicant through the Director of Public Prosecution wrote a letter dated 19-09-2025, seeking revision of the said orders under Sections 362 and 364 of the Criminal Procedure Code. It was contended that the trial court irregularly released crucial exhibits to the respondent inter alia; the subject motor vehicle; mobile phones and tablets yet they required complex investigation cutting a cross various counties and agencies thus compromising investigation which was on going.
9. It was averred that ownership of the motor vehicle had not been established while mobile phones and tablets had not been subjected to forensic analysis.
10. The ODPP requested the High Court to exercise its supervisory powers to review and set aside the magistrate's orders, allowing the investigation to proceed without interference and ensuring that the decision to charge or not be made based on complete forensic evidence.
11. The court ordered for the application to be canvassed by way of written submissions. However, the applicant did not file any submissions thus adopting the content of their letter for revision.
12. The respondent/interested party filed submissions thus urging that the applicant had failed to establish that they deserve the orders as contemplated under Section 362 of the Criminal Procedure Code, which empowers the High Court to examine records from subordinate courts to assess the correctness, legality, or propriety of any finding, sentence, or order. That the consent orders issued by the trial court on 16.09.2025 regarding the release of the respondent's motor vehicle and other items does not fit under the parameters set out under Section 352 of the CPC. Counsel contended that the impugned orders were not imposed by the Court but were mutually agreed upon by the parties. That the applicant's attempt to fault the Court for merely recording the consent is not only unusual but regrettable.
13. It was urged that despite having custody of the respondent's property for over two months, the investigations remained incomplete, suggesting lack of commitment to resolving the matter and a greater interest in retaining the property. That no evidence was presented before court to suggest that releasing the items would compromise the investigations. Learned counsel submitted that the applicant had admitted that no incriminating evidence had been found on the Respondent's mobile phones.
14. It was further urged that the applicant had raised concerns about the ownership of the motor vehicle but failed to provide any documentation or proof of any other claimant. That the applicant had not offered sufficient grounds to justify setting aside, reviewing, or quashing the consent orders. Consequently, it was prayed that the High Court direct the Applicant to comply fully with the orders issued on 16.09.2025.
15. I have considered the application herein and the response thereof. The gist of the application is the claim by the prosecution that the trial court irregularly and erroneously released crucial exhibits among them a mv before investigations were complete thus jeopardizing the integrity of the said investigations. On the other hand, the respondent urged that the applicant was given more than sufficient time to carry out investigations but failed. That in any event, the release of the said exhibits was by consent.
16. The constitutional provision on supervisory jurisdiction of the High Court to make orders of revision is Article 165 (6) and (7) of *the Constitution* of Kenya, 2010 which stipulates that:

“6-The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising judicial or quasi-judicial function but not over a superior court.



7. For the purposes of clause (6) the High Court may call for the record of any proceedings before the subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
17. The above constitutional imperative is further underpinned under Sections 362 and 364 of the Criminal Procedure Code which empowers this Court to deal with revision applications as follows: “
362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying 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”
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- (1). In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to his knowledge, the High Court may-
- a) ...
- b). In the case of any other order other than an order of acquittal, alter or reverse the order.
2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.”
18. It is trite that the exercise of this power by the high court is discretionary. See Prosecutor v Stephen Lesinko(2018)e KLR.
19. In the instant case, the exhibits in question were impounded on 30-7-2025. The court was then requested to detain them for 14 days which period was extended for a further a period of 21 days. On 16-9-2025 they were released without any objection pursuant to the respondent’s application. Prosecution had no objection to their release. For the applicant to argue that the exhibits were released erroneously is not tenable. The arguement does not meet the threshold set out under sections 362 nor 364 leave a lone Articles 165(6) or (7) of the constitution.
20. I do not find any illegality, impropriety or irregularity committed by the trial court. The prosecution was properly represented by a competent prosecutor in court who saw no need to oppose release of exhibits to the owner/s. From 30-07-2025 up 16-09-2025, the applicant had sufficient time to complete investigations. Besides, regarding the ownership of the MV, the respondent and his wife tendered evidence of ownership which was subject to verification even in a day by contacting the seller which is a company.
21. Nobody has claimed ownership of the MV nor does it take two months to do a search at NTSA. The respondent explained that the Mv was bought partly on credit hence the reason why the ownership name still remains that of the seller. This position was not challenged. In any event, the mv can be released on condition that it is availed whenever required for identification in court. The orders made by the trial court are discretionary hence no prejudice suffered by the prosecution.
22. The orders sought in this application are not tenable in the circumstances. There is no proper basis laid to justify variation or revision in the manner contemplated in the revision application. In any event, by default, the applicant has had more than sufficient time to finalize investigations during the pendency



of this application and ruling. Accordingly, I do not find any merit in the application hence the same is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF NOVEMBER THIS 2025

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J.N.ONYIEGO

JUDGE

