

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
CIVIL SUIT NO. E001 OF 2025

JUSTO MUNG'ATHIA MWITHALE
..... **APPLICANT**

VERSUS

KENYA WILDLIFE SERVICE
1ST RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY

.....
.....**2ND RESPONDENT**

RULING

1. The Applicant, has moved this court by way of a Notice of Motion dated 7th April 2025, seeking an order directing the Respondents to unconditionally release the Plaintiff's vehicle Reg. No. KBQ998U FSR33 Lorry, pending the hearing and determination of the suit, in which he prays for, *inter alia*, damages for loss of user.
2. The Applicant states that on 24th January 2025, his driver had gone to collect sand from Ndumuru when the respondents' officers impounded the vehicle, and attacked the driver, forcing him to flee from the scene. He further states that the vehicle was towed to a conservancy in Ndumuru and the respondents have since refused to release it. It is stated that no action has been taken against him and believes therefore that the impounding was malicious

3. It is further stated that the vehicle was being used to ferry goods, sand, and stones for sale, and that its prolonged detention risks damage and depreciation, and has deprived him of his source of livelihood. He estimates the loss at ksh. 150,000 per week.
4. He challenges the alleged illegality of the sand harvesting, the authenticity of the particulars of the occurrence book (OB) produced by the respondent in an attempt to show that there is an on-going investigation. He points out for instance that the occurrence Book (OB) number that has been submitted by the respondents is not accompanied by an extract, that there is no evidence that the case has been forwarded to DPP, and finally that there are no written statements from those who alleged to have been present during the sand harvesting.
5. The Applicant argues that where a vehicle is an income-generating asset and is not subject to forfeiture proceedings or required as a prosecution exhibit, it should not be confined to police custody. In this regard he has relied on the court's decision in the case ***Abdulrahman v Republic and Titus Mathenge Nguyo v Republic (2024)eKLR*** . He states that he is ready to abide by any conditions set by the court.

Respondent's Case

6. The defendants have opposed the application. It is their case that the vehicle was lawfully detained, as it was being used to commit illegal activities, namely illegal harvesting of sand within the **Shaba National Reserve**. That a multi-agency Government team intercepted the motor vehicle within the Game

Reserve when it was being loaded with the sand, and that the driver ran away when he saw the said team. That, consequently, the lorry was impounded and driven to Nakuprat Conservancy pending further investigation.

7. The Respondents maintained that the act of illegal sand harvesting constitutes an environmental crime; that the incident was reported and booked at Isiolo Police Station vide OB No. 44/26/01/2025; that criminal charges have been preferred against the plaintiff's driver for commencing the quarrying of sand without having obtained the requisite environmental impact assessment licence, and the charges are awaiting formal approval by the director of public prosecution (DPP). It is denied that the driver was assaulted, as he ran away when he saw the multi- Agency team. And that to date he is still at large.
8. The Respondents have attached photographs sand harvesting site, and an inspection report of the same site. There are also draft charge sheet with a list of witnesses and a forwarding letter dated 17th march 2025 to the D.P.P
9. It is the respondent's case therefore that the detention is lawful as the vehicle is the subject of an ongoing criminal investigation . They have further argued that this court has no jurisdiction to entertain a civil suit seeking the release of the vehicle in the circumstances of this case. It is argued that releasing the vehicle would be premature as its evidentiary value has not been exhausted. That the detention is especially necessary because pursuant to the provisions of Section 105 of the Wildlife

Conservation and Management Act, 2013, the motor vehicle is potentially liable to forfeiture to the state in the event of conviction of the accused person

10. The respondents have relied on the decision in the case of **Republic v Everlyne Wamuyu Ngumo** (2016)eKLR, where it was held:

“I find that the trial court was not entitled to direct that the motor vehicle be released to the respondent/accused... The reason for this is that the motor vehicle had not been produced as an exhibit in court. 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.”

Analysis & Determination

11. The court has considered the submissions of the parties and it is evident that the only issue for determination is whether this Court, can order the unconditional (or conditional) release of a motor vehicle.
12. The circumstances and facts are as set out above. I wish to state from the onset that the merits of alleged criminal activity is beyond the jurisdiction of this court, sitting as a civil court.
13. The court has however perused the documents presented, and *prima facie*, it is evident that there is an on- going investigation; there are draft charges, and a letter showing that the case has been forwarded to DPP. The respondents’ allegation that the suspect is still at large has not been refuted, as

the Applicant did admit that the driver of the vehicle then, ran away.

14. Further though the Applicant has referred to several visits to the respondents' offices and other government offices in an attempt to get his vehicle, there is no evidence that he has written a letter or complaint about the 'illegal *detention*' of his vehicle. If his concerns were genuine he would have written a letter demanding for release and only approach the court if the demand is not responded to or not complied with. In any event, it is a requirement of the law, in civil matters that a demand Notice is issued to the defendant prior to filing of suit. Thus, at the minimum, there would be one letter filed alongside the plaint, indicating that a demand had been made to the respondents, which demand has not yet been responded to.
15. I have considered the decision in **Abdulrahman v Republic (2024) eKLR** which the Applicant has relied on in regard to withholding of Exhibits or potential exhibits. In the cited case the court found that there was nothing to indicate the motor vehicle was subject to forfeiture proceedings or was a prosecution exhibit. In the present case the law expressly provides that such Exhibits may be subject to forfeiture upon conviction.
16. The Applicant has further argued that "nothing has been done" , which I take to mean that no charges had been preferred. I have carefully perused the documents filed in support of each party's case. There is no dispute that the incident took place on 24th January 2025; according to the OB number provided, the case was reported to the police the

following day, that was on 26 .01. 2025. Some of the time must have gone to investigating the matter, and finally submitted to the DPP. ON 17 .03.2025. The Applicant herein filed suit on 08.04. 2025. Thus what the Applicant is calling “nothing *being done* “ is in reference of a period of about one month.

17. I do not consider one month’s investigation to be too long to raise suspicion on the genuineness of the investigation process. Contrary to the Applicant’s suggestion therefore, I do not see malice. There is evidence, documentary in nature, backed up by photographs to prove that investigations were done.

18. The loopholes in the case, which the Applicant has attempted to point out to this court, belongs in the criminal jurisdiction, not civil. The Applicant will have the chance at the criminal court to address the alleged loopholes. The Applicant should also wait to present his request for release to the criminal court.

19. In the end I do not find any merit in the Application. It appears to me that the Application is an attempt to circumvent the possible consequence of a criminal charge(s) . It is hereby dismissed with costs to the Respondents.

Dated, signed and delivered virtually, at Nairobi this 24th day of November 2025.

S. Chirchir

Judge.

In the presence of :

Roba Katelo- Court Assistant

Mr. Maheli for the Applicant.

Mr. Mutai for the 1st Respondent.

ORIGINAL