



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E109/2025

MARY MUSAU VS THE REPUBLIC AND ODP

RULING

RULING

The Notice of Motion dated 8th July 2025 filed by the applicant is brought under Article 40 and 165 (6) of the Constitution of Kenya and Section 362 of the Criminal Procedure Code. The same is supported by the affidavit of Mary Musau and Wilfred Musau both sworn on 8th July 2025.

The Applicant prays for orders: -

1. Spent
2. Spent
3. Spent
4. That the Honourable Court be pleased to call for the lower court records in Mombasa CMCMisc Crm.App no. E434 OF 2025 – R vs Musau for the purpose of ascertaining the legality, procedural propriety or otherwise, and correctness of the proceedings and orders issued therein by Honourable Magistrate Ollimo on 20th June 2025.
5. THAT the proceedings and orders of Honourable Magistrate Ollimo issued on 20th June 2025 in Mombasa CMCMisc Crim.App no. E434 of 2025 – R vs Mary Musau be and are hereby set aside.
6. THAT the Honourable Court be pleased to order any other relief in the interest of justice.

One Number 92935 PC Fredrick Muchiri, a police officer attached at DCI-ATPU Mombasa swore an affidavit on 3rd October 2025 in opposition.

The applicant contends that since 2016 she has had a long standing business relationship with Rana Auto Selection Ltd wherein her family have been purchased several motor vehicles from Rana Auto



Selection Ltd. On or about August 2019 she purchased motor vehicle KCU420X (hereinafter referred to as “the subject vehicle”) through her mother Ruth Wakio at a consideration of ksh. 1,400,000/-. The same was paid in cash instalments of ksh. 300,000/- (paid on 20/8/2019), ksh. 100,000/-(paid on 21/9/2019), ksh. 500,000/-(19/12/2019) and ksh. 500,000/- (no receipt attached). After payment of consideration the applicant was subsequently registered as the owner of the subject vehicle which she sold it to Wilfred Musau.

Wilfred Musau stated in paragraph 1 of his affidavit stated that he bought the subject motor vehicle from Rana Auto Selection Limited and he currently has possession of the same. In paragraph 2 of the same affidavit he states that he bought the subject motor vehicle from Mary Musau (the applicant) through a sale agreement dated 23rd June 2025 and paid a consideration of ksh. 900,000/-. The applicant and Wilfred Musau are yet to register the subject motor vehicle in the name of Wifred Musau before he was informed of the orders of 20th June 2025.

On 20th June 2025 the learned Magistrate issued orders granting the prosecution, through PC Fredrick Muchiri, authority to seize and detain the subject vehicle and to obtain related persons, documents or items for ongoing investigations.

The Respondents state that a complaint was lodged at Central Police station, Mombasa vide OB No. 18/17/06/2025 by Rana Auto Selection Company Limited for an alleged offence of stealing of motor vehicle contrary to Section 278A of the Penal Code. The Director of the said Company (Mr Ralsat Ali Khan) recorded his statement and informed the police that Wifred Musau, who is well known to Mr Ralsat Ali Khan, approached him with a view to purchasing a motor vehicle from Rana Auto Selection Company Ltd.

That Agnella Wakio an employee at Rana Auto Selection Company Ltd sold the subject motor vehicle to Wilfred Musau without the knowledge of Mr Ralsat Ali Khan. The company audited its accounts and discovered that Agnella Wakio had sold several motor vehicles including the subject motor vehicle without the knowledge of Mr Ralsat Ali Khan and without any payment being made to the Company. The respondent also discovered that Wifred Musau and Mary Musau intends to sell the subject motor vehicle to another third party so as to frustrate the investigations hence the need to file Misc. Application E434 of 2025 seeking orders to detain the subject motor vehicle.

I have considered the Applicants Notice of Motion and the affidavit in support. I have also considered the Respondent’s response. The issue for determination is whether the application has merit and what orders this court should make.

It is important to mention that the applicant’s challenge came at a time when a formal complaint had been made at Central Police station vide OB NO. 18/17/6/2025. The applicant does not deny the existence of the same. The National Police Service and the Office of the Director of Public Prosecution have constitutional and statutory mandates and powers to respectively investigate and prosecute crimes. These powers have to be exercised within the parameters set by the law.

In the instant matter, the applicant is yet to be arrested and charged before a competent court vested with jurisdiction to handle the charges preferred against her. Her rights under Article 49 and 50 will automatically crystalize, with the prosecution bearing the burden to prove its case against her and allowing her a fair opportunity to defend himself in court. She will at all times remain innocent until proved guilty.



The 1st and 2nd respondents have a statutory duty under the National Police Service Act to investigate criminal complaints, and the Director of Public Prosecutions has the mandate to determine whether to prosecute based on the evidence gathered.

In **Paul Ng'ang'a Nyaga vs Attorney General & 3 Others (2013) Eklr** it was held that:

“.....this court can only interfere with and interrogate the acts of other Constitutional bodies if there is sufficient evidence that they have acted in contravention of the Constitution.”

The Court in **Kipoki Oreu Tasur v Inspector General of Police & 5 Others [2014] eKLR** stated that:

“ The criminal justice system is a critical pillar of our society. It is underpinned by the Constitution, and its proper functioning is at the core of the rule of law and administration of justice. It is imperative, in order to strengthen the rule of law and good order in society, that it be allowed to function as it should, with no interference from any quarter, or restraint from the superior Courts, except in the clearest of circumstances in which violation of the fundamental rights of individuals facing trial is demonstrated...”

In **Republic v Commissioner of Police and Another ex parte Michael Monari & Another [2012] Eklr** the Court held that:

“ ... the police have a duty to investigate on any complaint once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.....”

The above decisions reiterate the Respondents' duty to conduct investigations into complaints and subsequently, if there is enough evidence, to charge the person accused of the offence. Investigations and trials are legal procedures that must be conducted and enforced. It has not been suggested that the respondents are trying to steal a match by changing the goal post.

It is this court's opinion that the Respondents acted within their powers as provided under the Constitution and the law. The magistrates handling criminal matters in our justice sytem are well trained judicial officers. They will be able to discern if the applicant has a case to answer or not hence I find no reason to interfere with the lower court's orders of 20th June 2025.

Accordingly, I find no merit in the application dated 8th July 2025. It is dismissed

DELIVERED, DATED and SIGNED at MOMBASA on this 27th day of NOVEMBER 2025.

Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI



JUDGE

In the presence of;-

APPLICANT

RESPONDENT: **SIRIMA**

COURT ASSISTANT: **MS BEBORA**

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-27 16:58:20

