

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MALINDI**  
**CRIMINAL REVISION NO. E014 OF 2024**

**KENYA NATIONAL HIGHWAYS AUTHORITY .....APPLICANT**

**VERSUS**

**WINFRED WANDIA KISAU .....RESPONDENT**

**RULING**

1. By an Application dated 16.2.24, the Applicant seeks the following orders:

1. *Spent.*
2. *THAT this Honorable Court be pleased to call for the file in Kilifi Miscellaneous Traffic Application No. E101 of 2023 to examine the records of the subject proceedings therein for the purpose of satisfying itself as to the correctness, legality and or the propriety of the order issued by of Hon. J. M. Kituku, SPM on 30th October, 2023 directing the release of Motor Vehicle Registration Number KAS 738M (Mitsubishi Truck) be released without payment of any storage fees to the Respondent herein.*
3. *THAT this Honorable Court be pleased to order stay of execution of the orders issued on 30th October, 2023, directing release of Motor Vehicle Registration Number KAS 738M (Mitsubishi Truck) be released without payment of any storage fees pending inter partes hearing and determination of this Application.*
4. *THAT this Honorable Court be pleased to review, vacate, revise, vary, set aside and/or discharge the Orders of the Honorable Court issued on 30th October, 2023 directing release of Motor Vehicle Registration Number KAS 738M (Mitsubishi Truck) to the Respondent.*
5. *THAT this Honorable Court be pleased to make any other order or relief as it may deem just and fair to meet the ends of justice.*

2. In a supporting affidavit sworn by Kennedy Ndugire, its Senior Engineer on 16.2.24, the Applicant states that it is aggrieved by the trial Magistrate's order for the release of the said motor vehicle without payment of storage fees. The Applicant's case is that the Application herein if successful, will be rendered nugatory if the stay is not granted. Further that if the Respondent proceeds with the execution of the ruling and order in question, the Applicant will suffer irreparable loss. It is further contended that the Application raises serious and pertinent issues of fact and law and is not frivolous. The Applicant thus prays that the Court exercise its supervisory jurisdiction and address itself on the Order issued on 30.10.23 to avert miscarriage of justice.

3. The Respondent opposed the Application *vide* a replying affidavit sworn on 12.3.25. She averred that following detention of her vehicle on 23.8.23 for carrying excess load, the court ruled in my favour on 30.10.23 and orders issued. She paid the fees imposed upon her by the Applicant to secure unconditional release of the vehicle and acquired exemption permit. She stated that she has no intention to appeal against the said fees following the Applicant's advisory. Her lament is that contrary to valid, clear and unequivocal orders from court and her compliance, the Applicant continued to illegally detain the vehicle until the 21.2.25.
4. The Respondent further stated that being aggrieved by the decision of the court, the Applicant sought review of the same *vide* an application dated 10.11.23. The Application was dismissed in a ruling dated 25.2.24 for want of jurisdiction. The Applicant then moved this Court in the present Application but interim stay sought was not granted. The Respondent then proceeded to file an application for contempt of court against the Applicant. The parties however signed a consent dated 21.2.25 for the unconditional release of the vehicle.
5. The Respondent contends that the Applicant has not demonstrated how the trial court misdirected itself in interpretation of the provisions of the East African Community Vehicle Land Act. Further that the Applicant failed to defend the Respondent's application in spite of service. The Respondent asserted that in light of the foregoing, the Application is fatally and incurably defective and an abuse of the court process. Further that the same falls outside the scope of a revision and that the Applicant ought to have appealed the decision. The Respondent urged that the Application be dismissed with costs.
6. This Court has supervisory jurisdiction over subordinate courts. Article 165(6) and (7) of the Constitution thereof provide as follows:
  - (6) ***The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a 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 any 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.***
7. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.

8. Upon obtaining the record of criminal proceedings in subordinate courts, this Court is required to examine the same and satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. Section 362 of the Criminal Procedure Code (CPC) provides:

***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.***

9. Section 364 of the CPC confers upon this Court the power of revision as follows:

***(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 its knowledge, the High Court may—***

***(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;***

***(b) in the case of any other order other than an order of acquittal, alter or reverse the order.***

***(c) ...***

10. The purpose of the revisional jurisdiction of this Court is to correct irregularities, improprieties or illegalities that are clearly apparent and give appropriate directions.

11. In **Joseph Nduvi Mbuvi v Republic [2019] eKLR**, Odunga, J. (as he then was) considered the import of the revision jurisdiction of this Court and stated:

***In my considered view, the object of the revisional jurisdiction of the High Court is to enable the High Court, in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.***

12. I have perused the record herein with a view to satisfying myself of the correctness legality or propriety of the order complained of. I have also carefully perused the Application. Other than stating that the Application raises serious and pertinent issues, the Applicant has not stated what those issues are. The Applicant has also not demonstrated in what manner the irreparable loss claimed will be occasioned to it, if the orders sought are not granted. Additionally, the Applicant has not demonstrated or even suggested in its Application that the order made in the ruling of 30.10.23 or indeed the manner in which proceedings were conducted are illegal.
13. The Court noted that there was an attempt to raise the issue of illegality in its submissions. However, it is trite that submissions are not evidence. No new issue can be raised in submissions. In this regard I take guidance from the holding in **Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another CA NRB Civil Appeal No. 240 of 2011 [2014] eKLR** where Court of Appeal held:

*Submissions cannot take the place of evidence. The 1<sup>st</sup> respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented.*
14. Section 364(5) of the CPC explicitly provides that when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
15. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the Constitution or a statute, that procedure should be strictly followed. In the oft cited case of **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** the Court of Appeal stated:

*In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.*
16. Flowing from the above stated provisions of the law and the authority cited, the Applicant being aggrieved by the impugned orders, its redress lies with the appellate court. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the orders complained about and make a decision thereon.

17. In light of the foregoing, the Court finds that the Application is devoid of merit and the same is hereby dismissed with costs to the Respondent.

**DATED SIGNED and DELIVERED in MALINDI this 30<sup>th</sup> day of January 2026**

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**M. THANDE**  
**JUDGE**