

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL AND HUMAN RIGHTS PETITION NO. E023 OF
2025

**IN THE MATTER OF ARTICLES 22, 23 40(1) AND 47(1) OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 2(1) AND (2) 3(1) (2)
10(1), 27, 40(1) (3) 157(10) AND (11) 243 AND 244 OF THE
CONSTITUTION OF KENYA**

JUDY JEPKOSGEI KEMBOI PETITIONER

=VERSUS=

**THE HON. ATTORNEY GENERAL 1ST
RESPONDENT**

**THE NATIONAL POLICE SERVICE 2ND
RESPONDENT**

Coram: Justice R. Nyakundi
M/S Ngigi Mbugua Advocate for the Petitioner
M/s Winnie Cheruoyot Principal State Counsel

RULING

1. The Petitioner moved this Court primarily filing a petition dated 30th June 2025 seeking the following declarations based on the following grounds:
 - (a) *That she acquired motor vehicle KCK 635E Toyota Probox lawfully in a public auction carried out at Yamumbi Police Station for valuable consideration.*
 - (b) *After the auction the Petitioner rehabilitated the motor vehicle at a great expense to bring it back to sound mechanical condition.*

- (c) *The seizure of the same was done on a public holiday and did not abide due process.*
- (d) *There was no seizure order, warrants of attachment or any lawful authority that preceded the unlawful seizure.*
- (e) *The refusal to receive, process and act on her complaint was irresponsible, wreckless and smacks of impunity and rogue force operating outside the constitution and the law.*
2. Based on these, the Petitioner sought the following declarations:
- (a) *The Honourable Court be pleased to declare that the seizure translocation and continued detention of motor vehicle KCK 635E Toyota Probox by the 2nd Respondent is unlawful, illegal and unjustified.*
- (b) *The Honorable Court be pleased to order that motor vehicle KCK 635E Toyota Probox be restored to the Petitioner in the same state it was i.e. in sound mechanical state.*
- (c) *In the alternative to (b) above the Petitioner be compensated for the full value of her motor car at Kshs 550,000/=.*
- (d) *This Honorable Court be pleased to grant a permanent injunction against the 2nd Respondent from ever attaching, seizing or translocating her motor vehicle KCK 635E Toyota Probox.*
- (e) *Loss of user of the motor vehicle KCK 635E from 1/6/2025 to the date of restoration.*
- (f) *Costs of the petition.*
3. Following the filing of this petition, the Applicant filed a corresponding notice of motion expressed to be brought under Articles 22(1) & 22(3) of the Constitution of Kenya and Rule 4 (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013) seeking the following orders:
- (a) *Spent*
- (b) *That pending hearing and determination of this application interparties and determination thereof this Honorable Court be pleased to grant conservatory orders returning motor vehicle*

KCK 635E Toyota Probox to Eldoret Central Police Station or Moiben Police Station or Ainaptich Police Station to preserve it.

(c) That pending the hearing and determination of this constitutional Petition by the applicant herein, this honourable Court be pleased to grant conservatory orders restoring motor vehicle KCK 635E Toyota Probox to either Moiben, Ainaptich or Eldoret Central Police Stations for safe keeping.

(d) Costs of this application be borne by the Respondents in any event.

4. Which application is made on the following grounds:

(a) The Applicant acquired motor vehicle KCK 635E Toyota Probox for valuable consideration in a public auction.

(b) The motor vehicle was refurbished and repaired to make it mobile.

(c) The motor vehicle was clandestinely removed, seized and translocated to an unknown address in an opaque operation carried out during a national holiday.

(d) All efforts to get answers from 2nd Respondent's Officers in Uasin Gishu have been fruitless.

(e) The Respondents' actions are in contravention of Article 40(2) of the Constitution which protects the Applicant's right to own property free from interference by any of the state organs or public officers.

(f) The Respondent's actions unless checked will contravene Article 47(1) of the Constitution which entitles the Applicant to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair

(g) The Respondents' actions and omissions amount to a gross violation of the Constitution an infringement of the Applicants fundamental rights and an abuse of the authority granted to them by law.

5. The applicant Judy Jepkosgei Kemboi supported this application with an affidavit sworn on 30th June 2025 which depose as follows:

- (a) That I am a female adult of sound mind and a resident of Merwet in Uasin Gishu County and the Applicant herein.
- (b) That I purchased motor vehicle KCK 635E Toyota Probox from Niki Auctioneers in the year 2021 after it was advertised as an unclaimed property.
- (c) That the motor vehicle had been advertised by the Officer Commanding Station (OCS) Yamumbi.
- (d) That after acquisition, Police at Yamumbi Police Station refused to hand over the chattel which necessitated me to apply to court for release.
- (e) That after release I could not immediately use the chattel as it required repair and works to restore it to sound mechanical status at a great expense which exercise lasted about 1 hour.
- (f) That I was only able to start using the chattel in 2025.
- (g) That my said car KCK 635E Toyota Probox was seized, translocated and taken to an unknown address by people who claimed to have been DCI Officers (Directorate of Criminal Investigation) under the direction of my local assistant chief and police officers from Moiben Police Station.
- (h) The said officers deceived my son Felix Kipchumba that they were taking the chattel to Ainaptich, Moiben and finally Eldoret Central Police Station but they never reported or booked it to either of them.
- (i) That I together with my family members made frantic efforts only to learn from one Lameck of Mobile 0725289000 that the chattel was being moved to Mombasa by road.
- (j) That I was advised at Ainaptich Police Station to do a complaint to the effected police stations which I did through my advocates on record.
- (k) That my complaint was served by a licensed Court Process Server but the same was declined by all addressees except the 1st Respondent.

- (l) *The Respondents actions of seizing, transferring my motor vehicle KCK 635E Toyota Probox from the location it was taken from was unlawful, unprocedural and out rightly unconstitutional.*
- (m) *That I am adviced by my counsel on record which I trust as true that the actions of the Respondents contravene Article 40(3) of the Constitution which protects citizen right to own property free from interference by any state organs or public officers.*
- (n)*That I am further advised and which I trust as true that the Respondents' actions above contravene Article 47(1) of the Constitution which entitles me to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*
- (o)*That without a doubt, the Respondents' actions amount to gross violation of the Constitution, an infringement of any fundamental rights and an abuse of the authority to them by law.*
- (p)*That what is stated herein is true to the best of my knowledge, information and belief.*

6. *This court considered the Notice of Motion within the legal parameters and the outcome of it is the following findings: The respondents were duly served with the necessary suit papers but they seem to have ignored and made no attempts to file an answer to the notice of motion. This calls upon this court to exercise discretion and grant the orders to a defendant claim. Bedside the above principles the guidelines governing the grant of mandatory injunction as set out in the case of Redland Bricks Ltd vs Morris (1969) 2 ALL ER 576 are also applicable to the effect of this case. Thus:*

- i. The grant of mandatory injunction is entirely at the discretion of the court. Every case must depend essentially upon its own circumstances.*
- ii. A mandatory injunction can only be granted where the plaintiff shows very strong probability upon the facts that gave damage will accrue to him in future*

- iii. Damages will not be sufficient or adequate remedy if such damages does happens*
- iv. Unlike the case where a negative injunction is granted to prevent the continuance or recurrence of a wrongful act, the question for the cost to the defendant to do the work to prevent or less the likelihood of a future apprehended wrong must be and element to be taken*

It is my utmost considered view that the Respondent/Defendants have diminished willingness to voluntarily release the subject motor vehicle to the Petitioner/Applicant without according her a hearing on how she acquired the motor vehicle through a public auction. It is only the court intervention which can compel the Respondents/Defendants to do so. Hence, this order that the Respondents/Defendants forthwith releases to the officer commanding Eldoret Central Police Station or Moiben Police Station or Ainaptich Police station to preserve it as provided in Order 40 Rule 1 of the Civil Procedure rules pending the hearing and determination of the petition dated 30th day of June 2025

This order is made in chambers this 30th of July 2025 for publication following a hearing held on 23rd July 2025, further to the above, the petition has been admitted for hearing and same be canvassed by way of written submissions in which the petitioner shall have 14 days to file and serve the Respondents/Defendants and thereafter it is expected rejoinder submissions shall follow in any event.

7. From the various oral applications made by learned counsel Mr. Ngigi on behalf of the petitioner, the above orders remain in limbo in so far as compliance by the Respondence is concerned. The order was appropriately served within the tenets of procedural law upon the Respondents but there has been no effort to take in positive steps to comply or seek leave from this court for variation.

8. In an effort to demonstrate compliance with the ruling of this court the Respondent filed a replying affidavit dated 27.1.2026 sworn by No. 113636 PC LAMECK OKARI who deponed as follows:

1. **THAT** I am a police officer within the meaning of the National Police Service Act and one of the investigating officers in this matter and competent to swear this affidavit.
2. **THAT** I am a police officer duly authorized under the National Police Service Act and currently attached to DCI IB Coast Regional Headquarters, and I am one of the officers investigating the suspicious auction of motor vehicle registration number KCK 635 E Toyota Probox, and competent to swear this affidavit.
3. **THAT** I am one of the investigating officers investigating into a case Forgery and uttering false documents - contrary to Sections 349 and 353 of the Penal Code, False swearing Contrary to Section 114 of the Penal Code, Contempt of Court for disowning sworn affidavit and misleading the court. Fraudulent disposal of public property, Obtaining Money by False Pretenses Contrary to Section 313 of the Penal Code, Abuse of office and official [misconduct Contrary to Leadership and Integrity Act and Penal Code, Breach of Auctioneers Act and Rules, including failure to observe required timelines and documentation standards and all other provisions of the laws of Kenya and I am fully conversant with the facts.
4. **THAT** on 10th April 2020, a letter was written by the OCS Yamumbi Police Station addressed to the Chief Magistrate's Court, Eldoret, referenced C/CRI/9/VOL.1/17, regarding unclaimed property, specifically a motor vehicle KCK 635E Toyota Probox, being held at the station for over 12 months.
5. **THAT** the said letter referenced Section 63 of the National Police Service and sought authorization for the disposal of the vehicle via public auction.

6. *THAT on 29th June 2021, an affidavit sworn by one No. 235615 Chief Inspector Bathsheba Atiki, OCS Yamumbi Police Station, was filed in Eldoret Law Court Misc. Application No. E372/2021. She swore the affidavit under a certificate of urgency, attaching: a) A proclamation notice marked BA-1 b) An instruction letter to NIKI Auctioneers and their auctioneer's license, marked BA-2*
7. *THAT in the said affidavit, the OCS declared that the vehicle KCK 635E Toyota Probox had remained at the police station for more than 12 months and had been duly declared unclaimed and required to be disposed of via public auction, citing Auctioneers Act No. 5 of 1996 and Rules of 1997.*
8. *THAT an instruction letter dated 28th April 2021 from OCS Yamumbi Police Station to NIKI Auctioneers, P.O Box 1629, Kakamega (Tel: 0725587218), was issued and later annexed to the affidavit as BA-2*
9. *THAT On or about 6th July 2021, an alleged auction took place for motor vehicle KCK 635E Toyota Probox, reportedly stationed at Yamumbi Police station*
10. *THAT the said auction as conducted by NIKI Auctioneers, Purportedly appointed via an affidavit sworn on 29th June 2021 by Chief Inspector Bathsheba Atiki, then Officer Commanding Station (OCS) Yamumbi Police Station, under a certificate of urgency filed in Eldoret Mic Crim Application No E372/2021 .*
11. *THAT the said affidavit attached an instruction letter dated 28th April 2021 and a proclamation notice, seeking court authorization to auction the vehicle, allegedly unclaimed and held at the station for over 12 months*
12. *THAT later, Chief Inspector Bathsheba Atiki disowned the affidavit and instruction letters, claiming she neither authorized the auction nor instructed the auctioneer, thereby raising questions of forgery. impersonation, or fraud.*

13. *THAT on 7 July 2021, NIKI AUCTIONEERS filed a report to court indicating that the public auction occurred on 6th July 2021 at 0900 hrs, contrary to the law.*
14. *THAT Rule 17(1)(a) of the Auctioneers Rules (Legal Notice No. 120 of 1997) mandates that: "A public auction shall take place between the hours of 10.00 a.m. and 6.00 p.m."*
15. *15 THAT the auction held at 9:00 a.m. was in violation of Rule 17(1)(a), rendering it unlawful, null, and void, since no special court order was obtained to deviate from the prescribed hours.*
16. *THAT such premature timing undermines transparency and procedural fairness, potentially locking out interested bidders and facilitating clandestine transactions.*
17. *THAT further, the auction was advertised on 2nd July 2021 in the Star Newspaper and conducted on 6th July 2021, giving only four (4) days' notice, contrary to Rule 12(f) of the Auctioneers Rules, which states: "Sale shall not take place earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter."*
18. *THAT the advertisement timeline violated the law, denying the public adequate notice and thereby breaching the principle of openness expected in public auctions.*
19. *THAT the auctioneer also failed to assign any lot number or item catalogue to the vehicle, which is required under Rule 17(2) of the Auctioneers Rules: "The auctioneer shall make reasonable arrangements for the identification of the items for sale by list or catalogue and by the allocation of lot numbers which shall so far as possible be indicated on the goods at the time of sale." 20.*
20. *THAT the absence of lot numbers, catalogues, or physical marking casts doubt on the genuineness of the auction and opens the process to manipulation or substitution.*

21. *THAT further, under Rule 12(b) of the Auctioneers Rules, a proclamation inventory must be “ signed by the owner of the goods or an adult person residing or working at the premises.”*
22. *THAT no such signed inventory or proclamation exists in the records provided, further demonstrating a blatant disregard of statutory safeguards meant to protect the owner and public interest.*
23. *THAT during investigations, it emerged that there are two motor vehicles bearing registration number KCK 635E, both being Toyota Probox, thereby raising strong suspicion of: a) Double registration b) Fraudulent concealment c) Improper identification of the actual vehicle sold*
24. *THAT these anomalies suggest a possible fraudulent disposal of public property, a criminal offence under the Penal Code and Anti-Corruption and Economic Crimes Act.*
25. *THAT NIKI Auctioneers, through James Alumasa, filed a comprehensive report on 7th July 2021 indicating that: a) The auction was held on 6th July 2021 at 0900hrs b) Advertisement was published in the Star newspaper on 2nd July 2021 c) Handbills were also distributed. d) The property was sold, raising Kshs 150,000/= of which Kshs 32,320 was deposited at KCB Bank A/C No. 1119759730, Transaction Code SZE71702MMD1 on 06/07/2021.*
26. *THAT the auctioneer's report indicated a sale value of Kshs. 150,000, yet only Kshs. 32,320 was deposited into KCB Bank Account No. 1119759730, under Transaction Code SZE71702MMD1 on 6th July 2021 at 15:38:56 hrs.*
27. *THAT the remaining Kshs. 117,680 was allegedly deducted as costs, but no supporting breakdown, receipts, or authorizations were provided, violating financial accountability standards under the Auctioneers Act and Public Finance Management Act.*

28. *THAT this matter traces back to 10th April 2020, when the then OCS Yamumbi wrote to the Chief Magistrate, Eldoret, vide Ref: C/CRI/9/VOL.1/17, seeking authorization to dispose of the motor vehicle held at the station for over a year.*
29. *THAT the letter unreferenced Section 63 of the National Police Service Act, which deals with disposal of unclaimed property, but did not include any inventory or signed owner declaration. letter*
30. *THAT despite the above, auctioneers were instructed via a disputed dated 28th April 2021, later annexed as BA-2 to the allegedly disowned affidavit by Chief Inspector Atiki.*
31. *THAT I am fully conversant with the facts of this matter by virtue of my investigative role, and the contents herein are true and correct to the best of my knowledge.*
9. The above pleadings and affidavit evidence forms the basic structure upon which this court will navigate the litigation landscape of the petition to ask itself the question whether there has been contempt on the face of the court by the Respondents to bring the Justice System into disrepute.

DECISION

10. I have considered the chronology of events in this matter with the fundamental issues raised in the petition, Notice of Motion and affidavit in support together with belatedly filed replying affidavit by the representative of the National Police Service as established under Article 244 as read purposively with Article 245 of the constitution. This evidential material raises prima-facie a case for the petition to be determined on the merits. In the interim period, this court shall proceed to consider whether there has been a breach of the orders issued 30th July 2025.
11. The borne of contention is whether the seizure of the motor vehicle Registration No KCK 635E Toyota Probox by the Respondents was done in total violation of procedural law as a consequence of which

there is a necessity to sight each one of them jointly and severally for contempt.

12. *In Kenya the power of the courts to punish for civil contempt is derived from Order 52 of the Rules of the Supreme Court of England (White Book). Its main purpose has been aptly put in the explanatory note to Order 52 under rule 1 sub-rule 2 of the White Book thus: " The term contempt of court is of ancient origin having been used in England certainly since the thirteenth century and probably earlier. It is based not on any exaggerated notion of the dignity of individuals be they Judges, witnesses or others but on the duty of preventing any attempt to interfere with the administration of justice."*

In the case of **Republic v Liberty Press Limited and Others, (1968GLR 123)** the court set out the justification of inherent powers donated to it to punish for contempt. Thus: *" The important position of the judiciary in any democratic set -up must be fully appreciated performing, as they are called upon to do, the sacred duty of holding the scales between the executive power of the state and the subject and protecting the fundamental liberties of the individual, the courts must not only enjoy the respect and confidence of the people among whom they operate, but also must have the means to protect that respect and confidence in order to maintain their authority. For this reason, any conduct that tends to bring the authority and administration for the law into disrespect or disregard or to interfere in any way with the course of justice becomes an offence not only against the court but against the entire community which the courts serve. "*

13. There are very clear established precedents in Kenya regarding emphasizing that court orders must be obeyed regardless of whether a party agrees with them or not. Disobedience of a court order constitutes contempt of court which can be civil or criminal in nature. This case involves non-compliance with procedural requirements of preserving the subject matter motor vehicle

pending the hearing and determination of the petition. In the first instance, the Respondents were served with the court process but elected not to file any rejoinder to the issues which were being canvassed in the Notice of Motion at the interlocutory stage of the proceedings. Indeed if one does not agree with an order of the court, then he or her ought to move the court to discharge the same. For a party to blatantly ignore it is to be little the purpose for which courts are set up.

14. The comparative judgement by Lord Diplock in the case of **AG vs Times New Paper Ltd (1973) 3 ALL ER 54** stated that: *"In any civilised society it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. 'Contempt of court' is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms. The due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities, secondly, that they should be able to rely on obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based on those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law and thirdly that, once the dispute has submitted to a court of law, they should be able to rely on there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to*

prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court.”

15. What are the key legal principles established to guide courts in exercising discretion to invoke the doctrine of contempt of court orders on the face of the record.

- **Duty to obey:** *Court orders, including injunction, must be obeyed until they are set aside or discharged by a court.*
- **Civil vs Criminal Contempt:** *Disobedience of a court order (civil contempt) is generally used to force compliance, while criminal contempt involves conduct that disrupts the courts proceedings I in facie curiae)*
- **Consequences:** *Disobedience can lead to committal to prison, fines, or seizure of assets*
- **Mental Element:** *The disobedience must be willful and deliberate, not merely accidental.*

16. The instant matter is a cause of anxiety in our legal system because of the increasing trend by government or its constitutional organs to behave as if there are in a competition with the court in a measure which can be said to be done to show as to who has more muscle in certain matters more so, where the decisions of courts question certain executive powers which are guided by expediency outside the scales of the rule of law. The Kenyan people in 2010 promulgated the constitution which embodies the Judiciary as the ultimate power to give meaning to the law such that all other state organs have no option but follow and submit to its determination and if aggrieved with an inferior court decision there is a right of appeal to the next superior Court. This doctrine of separation of powers is very significant as given by Baron De Montesquieu in 1748 when in *the Spirit of Law* he wrote “ *When the legislative and executive powers ae united in the same person, or in the same body of magistrate, there can be no liberty...there is no liberty if the powers of judging are not separated from the legislature and the executive. There would be an end to everything, if the same man or the same*

body were to exercise those powers. In the case of the **Queen Beauregard (1986) 2 S.C.R.56** it was observed that the role of the courts as resolver of disputes, interpreter of the law and defender of the constitution requires that they be completely separate in authority and function from all other participants in the justice system.

17. The court of Appeal alluded to the issue under discussion in the case of **Kenya Human Rights Commission v Attorney General & Another (2018) eKLR** where it was held: “ *That the constitution (Article 4(2) declares Kenya a democratic state founded on national values and principles of governance which include the rule of law and democracy. Disobedience and disregard of the authority of the courts violates national values and the constitution. In that regard, court punish for contempt in order to maintain their dignity, authority, the rule of law, democracy and administration of justice as foundational values in our constitution*”

18. The immediate consequence of the action taken by the Respondents is that of lack of credibility and confidence in our legal system by the citizens leaving them with no legal recourse for any injustice suffered by them from any of the other arms of government. It is apparent from the record of these proceedings since the petition was filed accompanied with the Notice of Motion followed with the decision of the court the Respondents are in contempt of the orders of this court. It is crystal clear that the Respondents have refused or failed to surrender the subject motor vehicle Registration No. *KCK 635E* Toyota Probox to the officer Commanding Eldoret Central Police Station, or Moiben, or Ainaptich Police Station pending the hearing and determination of the petition on the merits. It is further clear that the affidavit by the Respondents sworn by one LAMECK OKARI cannot be taken to purge the contempt in any way. This court takes a strong view that unless a appropriate remedial action is taken, the 1st and 2nd Respondent will continue to treat the orders of this court with impunity.

19. For those reasons, the following orders shall abide:

- a) *That a declaration be and is hereby made that an undertaking by the Respondents to retain the subject motor vehicle on any on any of the yards, location, or storage as purportedly pleaded in the affidavit elsewhere in Kenya is in contravention of the ruling of this court dated 30th July 2025.*
- b) *That a declaration be and is hereby made that a proper Purge of the contempt on the face of the record for the civil disobedience of the court order this far can only be admitted by this court upon removal of the subject motor vehicle from any of the location so known to the Respondent to the identifiable police stations which fall within the jurisdiction of this court pending the hearing and determination of the petition on the merits.*
- c) *That a declaration be and is hereby made that the belatedly replying affidavit by the Respondent fails to demonstrate the constitutional edicts of equality under the law as espoused in Article 27 of the Constitution.*
- d) *That a declaration be and is hereby made that the Respondents are hereby ordered to deliver the aforesaid motor vehicle within 14 days of todays ruling as a subject matter of the petition to expedite the hearing of the issues raised therein within 30 days from today's decision.*
- e) *That the costs of this interlocutory orders shall be in the cause and the Status Conference be and is hereby held on 18.2.2026 to monitor compliance.*

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 5TH DAY OF FEBRUARY, 2026

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R. NYAKUNDI

JUDGE