

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL REVISION NO. E007 OF 2026

REPUBLIC.....APPLICANT

-VERSUS-

ROBERT MWANGI MUGO.....

RESPONDENT

RULING

1. This matter was placed before me following receipt of a letter dated 3rd February, 2026, authored by learned Prosecution Counsel, Mr. John Paul Mokuu. This was pursuant to an order made by Hon. Mary Njuguna, SRM in **Nyahururu CMCRC No. E003 of 2026** directing release of motor vehicle Reg. No. KCB 885W (subject motor vehicle) to Mr. Robert Mwangi Mugo.
2. The illegality and irregularity pointed out was that another court of concurrent jurisdiction was seized of the matter where Mr. Mugo applied for release of the subject motor vehicle but the application was declined since he is to be charged with the offence of **Trafficking in Narcotics contrary to Section 4(1) of the Narcotic Drugs and Psychotropic Substances Act** where the subject motor vehicle is an exhibit, save that the Applicant is at large.
3. **Article 165(6) & (7) of the Constitution** provides thus;

(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.

4. This court has supervisory jurisdiction over the subordinate court, to correct errors made in order to ensure principles of justice are not contravened.

5. Section 362 of the Criminal Procedure Code provides thus;

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.

6. Having considered the letter, this court moved *suo moto*. I called for the two (2) files in issue. In ***Nyahururu Miscellaneous Application Case No. E052 of 2024 Robert Mwangi Mugo v OCS Nyahururu Police Station***

and 2 Others. Robert Mugo filed an application seeking release of the subject motor vehicle.

7. In a Ruling dated 22nd day of May, 2025, Hon. Waweru Wang'ang'a PM, had this to state;

“I have considered the grounds upon which it is brought and I am not satisfied why he has not been desirous to prosecute his matters. He filed application dated 11th June, 2024 but he did not appear to prosecute it and it was dismissed. He then filed application dated 12th June, 2024 to review those orders but did nothing about it and it is still pending. He did not stop there but filed a similar application dated 13th September, 2024 which was still dismissed for non-attendance.

He is now before court with the present application which does not lay clear grounds why all this time he has not found it a matter of urgency to move court for his rights. I can only see an indolent litigant testing the depth of water. His insinuation that his matters were dismissed because of a miscommunication and technological failures are unsubstantiated and baseless.

Third, the prosecution has objected to the release of the vehicle for the aforesated reasons

and I cannot agree more. I find if released, it will destroy the chain of custody and compromise the outcome of investigation considering Applicant is still at large. He should first surrender himself to aid police conduct and conclude investigation instead of making a litany of applications to evade justice. I think what he ought to have asked himself first before coming to court is; to who are the police going to release the subject motor vehicle if at all they cannot find him?

I find it is in the interest of justice police should continue impounding the subject motor vehicle until the Applicant surrenders himself to aid in investigation and it is up to him to decide when. His application be filed prematurely and I dismiss it.”

8. In ***Nyahururu Misc. Case No. E003 of 2026*** Robert Mwangi Mugo approached the court through Notice of Motion dated 13th January, 2026, seeking release of the subject motor vehicle which was confiscated by the police. The learned Prosecution Counsel, Mr. Eboso, informed the court that he could not respond to the application without information from the DCI and OCS Nyahururu, respectively, but, nevertheless did not oppose the application. In the result, the application was allowed. Hon. Njuguna, SRM delivered herself thus;

“In the circumstances, the Respondents having been duly served and failed to oppose the application, it is allowed as per the prayers sought subject to the condition that the Applicant presents to the police proof of ownership of the vehicle before it is released.”

- 9.** These two (2) courts are of similar jurisdiction. Such courts have no power to countermand a decision made by either court on the same matter. The application heard and determined by a court of concurrent jurisdiction cannot be reheard by a court of similar jurisdiction which is tantamount to sitting on an appeal over the decision of a similar court. It creates conflicting orders as it is evidenced herein.
- 10.** The court seized of the jurisdiction to give a contrary order would be a superior court. The remedy available for Robert Mwangi Mugo in the instant matter would have been either review or an appeal.
- 11.** It was erroneous and irregular for the latter Judicial Officer to deal with a matter that had been handled by another court and give a contrary order. Notably, the impropriety was actuated by the learned prosecution counsel who did not endeavour to seek time to obtain instructions from the DCI and OCS, respectively.
- 12.** The upshot of the above, is that I call to this court the impugned Ruling dated 26th January, 2026 in **Miscellaneous Criminal Application No. E003 of 2026** that is improper and irregular, which I quash and set aside.

13. It is so ordered.

Dated and signed this 11th day of February, 2026.

.....

L.N. MUTENDE

JUDGE