



Director of Public Prosecution & another v Oyoo (Criminal Revision E005 of 2026) [2026] KEHC 2359 (KLR) (2 March 2026) (Ruling)

Neutral citation: [2026] KEHC 2359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E005 OF 2026
RN NYAKUNDI, J
MARCH 2, 2026**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTION 1ST APPLICANT

THE OCS ELDORET 2ND APPLICANT

AND

RODGERS OYOO RESPONDENT

RULING

1. Before me for determination is Notice of Motion dated 5th February, 2026 expressed under the provisions of Art. 159(2)(d), 165(6) & (7) of *the Constitution* of Kenya, section 362 and 364 of the Criminal Procedure Code, Section 16(1), 211(1), 217(1) of the East African Community and Customs Act 2017. The applicants seek reliefs as follows:
 - a. Spent
 - b. That this Honorable Court be pleased to issue stay of execution orders on the orders of Hon. P. Areri, Senior Principal Magistrate Eldoret Law Courts issued on the 29th December, 2026 in Eldoret Chief Magistrate Court Miscellaneous Criminal Application No. E107 of 2026; Rodgers Oyoo vs. The Director of Public Prosecution pending the hearing and determination of this application.
 - c. That this Honorable Court be pleased to review and set aside or discharge the orders of Hon. P. Areri, Senior Principal Magistrate Eldoret Law Courts issued on the 29th January, 2026 in Eldoret Chief Magistrate Court Miscellaneous Criminal Application No. E107 of 2026; Rodgers Oyoo vs. The Director of Public Prosecution pending the hearing and determination of this application.



- d. That the Honorable Court be pleased to make or grant any other order/relief as it may deem just and fair to meet the ends of justice.
 - e. That costs of this application be borne by the Respondent.
2. The application is anchored on grounds on that:
1. That the Honorable P. Areri, Senior Principal Magistrate on 29th January, 2026 ordered release of a motor vehicle registration number KDQ 482N make Subaru Outback silver in color.
 2. That the motor vehicle was seized and detained by the 2nd applicant on after it was found conveying 116 cartons of Kingdom Vodka suspected to be uncustomed goods.
 3. That the Respondent filed an application dated 28th January, 2026 to release the motor vehicle registration number KDQ 482N and a Ruling was delivered on 29th January, 2026 where an order to release the said vehicle was granted.
 4. That the Senior Principal Magistrate erred in law by issuing illegal and irregular orders releasing motor vehicles that were not before court and are pending investigations, further never given the right to be heard.
 5. That the learned Senior Principal Magistrate erred in law failing to appreciate the provisions of section 214 of the East Africa Community Customs Management Act, 2004 which empowers the applicant to detain goods and vessels pending the conclusion of customs procedure as per the East Africa Community Customs Management Act, 2004.
 6. That the Learned Senior Principal Magistrate erred in ordering release of the motor vehicle devoid of jurisdiction to grant such orders.
 7. That the Honorable Senior Principal Magistrate erred in law and fact by failing to ensure that all the applicant was served and subsequently fail to grant the applicant adequate time and an opportunity to respond.
 8. That the applicant is highly apprehensive that the Respondent is likely to initiate contempt of Court proceedings against its officers and unless the application is heard expeditiously and orders sought therein granted the applicant will suffer irreparable loss and damage.
3. In response to the application, the Respondent swore a replying affidavit in which he made averments as follows:
- a. That I am the owner of the motor vehicle registration number KDQ 482N which was purchased from MKS Investment Company Limited.
 - b. That the continued detainer of my motor vehicle is a violation of my fundamental and constitutional rights to property pursuant to Art. 40 of *the Constitution*.
 - c. That I purchased the said motor vehicle through a loan that I have been servicing up to date.
 - d. That pursuant to the application that I made in Misc. Criminal number E107 of 2026 I was cleared that I was making the application pursuant to section 78 of the *Evidence Act* that allows photographic evidence and I am ready to present the said motor vehicle when it will be needed by this Honorable Court.
 - e. That further to the above the order that was issued by the Honorable Court was very clear that the 2nd applicant should photograph the said motor vehicle for record purposes.



- f. That the only reason the investigating officer does not want to release the said motor vehicle is for the reason that it is not registered in my name but have presented documentary evidence showing that indeed I bought the said motor vehicle.
 - g. That in the interest of justice and fairness that the instant application be dismissed and the subject motor vehicle be released.
4. I have considered the application and the response on record as well as the submissions filed by the Respondent.

Analysis and determination

6. The question that presents itself for determination in this revision is whether the learned Senior Principal Magistrate acted within the bounds of his jurisdiction in ordering the release of motor vehicle registration number KDQ 482N, and whether, in so doing, he committed any error of law or irregularity that would warrant the intervention of this Court in its supervisory capacity.
7. Let me begin with the issue of jurisdiction, which is foundational. The applicants have urged this Court to find that the learned Senior Principal Magistrate lacked the competence to order the release of the motor vehicle on the basis that the vehicle was seized under the provisions of the East Africa Community Customs Management Act, 2004, and that Section 214 of that Act vests in the customs authorities the power to detain goods and conveyances pending the conclusion of customs procedures. It is contended, in essence, that the administrative detention regime under the customs legislation ousts the jurisdiction of the Magistrate's Court to intervene in the custody of the seized vehicle.
8. The High Court's power of revision is set out in Art. 165 (6) and (7) of *the Constitution* of Kenya, 2010 which provides:-
- a. 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.
 - b. 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.
9. Section 362 of the Criminal Procedure Code Cap 75 (Laws of Kenya) further provides: -
- “The High Court may call 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.”
10. Section 214 of the East Africa Community Customs Management Act, 2004 does indeed confer upon customs officers the power to seize and detain goods and conveyances reasonably suspected to have been used in the transportation of uncustomed, prohibited or restricted goods. That power, however, is an administrative one, and it does not operate as an absolute bar to judicial oversight of its exercise. The customs legislation and the criminal justice framework do not occupy mutually exclusive domains they operate concurrently, and where a person whose property has been seized invokes the jurisdiction of a court of competent jurisdiction, the court is not thereby stripped of its authority to examine the legality and fairness of the continued detention of that property. To hold otherwise would be to place administrative action by the executive beyond the reach of judicial scrutiny, a proposition that is fundamentally incompatible with the Constitutional architecture of Kenya.



11. *The Constitution* of Kenya, 2010 under Article 23 guarantees every person the right to approach a court for redress where fundamental rights are threatened or violated, and Article 40 specifically protects the right to property from arbitrary deprivation. The administrative power of detention under the customs law must therefore be read alongside, and not in derogation of, these constitutional guarantees. In the premises, I find no merit in the contention that the learned Senior Principal Magistrate lacked jurisdiction to entertain the Respondent's application. The jurisdictional objection is accordingly overruled, and I proceed to examine whether the manner in which that jurisdiction was exercised is susceptible to criticism.
12. The learned Senior Principal Magistrate was seized of Miscellaneous Criminal Application No. E107 of 2026. The application was brought before him and a ruling delivered on 29th January, 2026. The complaint that the order was made without affording the applicants an opportunity to be heard is one I consider with some gravity, for the principle of audi alteram partem is a cornerstone of procedural fairness and natural justice. A party whose rights or interests are likely to be adversely affected by an order is ordinarily entitled to be heard before that order is made. To this extent, I find that if indeed the 1st applicant, the Director of Public Prosecutions, and the 2nd applicant, the OCS Eldoret, were not served and did not appear before the learned Magistrate, then the learned Magistrate's failure to ensure their presence before making the release order constituted an irregularity in the proceedings. This irregularity, standing alone, would be sufficient to attract the supervisory jurisdiction of this Court.
13. However, the question that follows is whether this Court, upon exercising that supervisory jurisdiction, should simply vacate the Magistrate's order and restore the vehicle to police custody, or whether it ought to fashion a more just and equitable remedy that takes into account all the circumstances of the matter.
14. In the case of *Jeremiah Kobia Munoro vs Republic* [2021] eKLR, the court held that:-

“... a motor vehicle parked in an open yard and unprotected from the hazards of the weather is prone to serious damage and depreciation.”

"It will not serve the interest of justice to, eventually release a "shell" to the rightful owner at the end of trial. It may even expose the state to litigation if at the end of the trial, there is no proof of that the motor vehicle was bought with proceeds of crime or no value is given to the complainant, if it is found to have been bought as such and yet it has completely depreciated in value."
15. The Court in the said case recognized, correctly in my view, that prolonged detention of a vehicle pending the resolution of a dispute is not a neutral act it causes real, measurable harm to the owner, harm that may ultimately fall on the State to answer for if the criminal process does not ultimately justify the continued seizure.
16. Section 177 (a) of the Criminal Procedure Code provides as follows: -

“Where, upon apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct.”



17. In the case of Republic v John Nganga Mbugua [2014] eKLR that: -

“It does not make any sense to keep the vehicle of the applicant which is an income generating asset in police custody until the pending criminal case is finalized. The prosecution have not attempted to demonstrate to this court why the vehicle should continue to be detained at the police station while the applicant is ready and willing to produce it during hearings.”

18. Further, and importantly, the order of the learned Senior Principal Magistrate did not amount to an unconditional or irresponsible release of the vehicle. On the contrary, the order directed that the 2nd applicant photograph the motor vehicle for record purposes before releasing it, a prudent and reasonable condition that preserves evidentiary integrity while balancing the Respondent's constitutional right to property under Article 40 of *the Constitution*. The Respondent has affirmed his readiness to present the vehicle before this Court or any court whenever called upon to do so.

19. On the question of stay of execution, Order 46 Rule 6 (2) of the Civil Procedure Rules, provides that an applicant who is seeking a stay of execution pending appeal must demonstrate the following:

- “ 1. Substantial loss may result to the applicant unless the order was made;
2. The application was made without unreasonable delay; and
3. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

20. Applying those principles to the present application, I find that the applicants have not discharged the threshold burden required to sustain an order of stay of execution. On the first limb, the applicants have not demonstrated with any particularity what substantial loss they stand to suffer if the release order of the learned Senior Principal Magistrate is not stayed. The motor vehicle in question has already been photographed in compliance with the conditions of the release order, and its evidentiary value for purposes of the pending investigations is therefore preserved.

21. The mere apprehension that the Respondent may institute contempt proceedings against officers of the 2nd applicant does not, without more, constitute substantial loss of the kind contemplated under the rule. On the second limb, while the application was filed with reasonable promptness, promptness alone cannot compensate for the failure to satisfy the other requisite conditions. On the third limb, the applicants have offered no security whatsoever for the due performance of any order that may ultimately bind them. It is settled law that all three limbs of the test must be satisfied conjunctively, and the failure to meet even one of them is fatal to the prayer for stay.

22. The key principles regarding the forfeiture of motor vehicles subject matter of the proceedings pending before a court of law or at the investigation stage include the following:

- a. Notice and Fair Hearing: The owner of the motor vehicle must be served with a notice to show cause why their vehicle should not be forfeited before the court makes a final order.
- b. Innocent Third-Party Rule: If the owner can prove they were not aware of the crime and were not complicit (e.g., the vehicle was stolen or hired for legitimate use), the court should not order forfeiture.
- c. Proportionality: The punishment of forfeiture must be proportional to the offence committed.



- d. Proof of Link to Crime: The prosecution must prove that the vehicle was actively used in the commission of the offence.
 - e. Completion of Criminal Case: Generally, forfeiture occurs upon the conviction of the accused, not at the beginning of the trial
23. Looking at this application, from the import of the realm of Civil Law which embodies Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules primarily review of a an inferior court or tribunal from this court could have been extended while exercising supervisory jurisdiction to revisit the issues which had already been determined to establish whether there is an error of fact or law apparent on the face of the record to warrant a variation of the order or ruling to meet the ends of Justice. As it is already stated review is not an appeal in disguise it must correct a patent error of fact, mistake or law. For me the application as it stands both in scope on the applicable law under Section 362 and 364 of the Criminal Procedure Code and in Pari Materia within the province of Civil Law there is no new compelling evidence to retry the issue on forfeiture of the subject Motor Vehicle.
24. The right to acquire and own property in Kenya is a fundamental right protected under Article 40 of the constitution and does prohibit arbitrary acquisition without public purpose even in the criminal proceedings a fair hearing must be conducted within the legal compliance. It is for trial courts to render itself fairly and proportionately on this constitutional imperative that even the National Police Service within the dictates of the constitution of investigating crime should not withhold rights to property or a motor vehicle without satisfying themselves on the protocols where the rule of law must prevail. It is not enough for the National Police Service to hide under the cover of investigation when it comes to prohibiting the beneficial interest and usage of Chattels like motorcycles, motor vehicles and other vessels which in the long run is likely to impact negatively on the Social Economic Rights of the person under investigation. The threat to infringement or violation of fundamental right to property is a question which must be balanced with other rights during the pending investigations by the National Police Service or other Investigative Agencies.
25. Having considered all the foregoing, it is important to emphasize that this Court's revisionary jurisdiction under Section 362 of the Criminal Procedure Code and Article 165(6) and (7) of the Constitution is discretionary in nature and is to be exercised with a view to ensuring the fair administration of justice, not to restore a state of affairs that is demonstrably unjust. For the reasons set out above, I accordingly come to the view that the Applicant has failed to proof that the evidence it relied upon by the learned trial Magistrate for the purpose of obtaining the order or release of the Motor Vehicle was erroneous in law and fact to being it within the supervisory jurisdiction of this court under Article 165 (6) & (7) of the constitution.
26. In the premises, I make the following orders:
- a. The application for review and setting aside of the orders of the learned Senior Principal Magistrate Hon. P. Areri dated 29th January, 2026 in Eldoret Chief Magistrate Court Miscellaneous Criminal Application No. E107 of 2026 is hereby dismissed.
 - b. The order of the learned Senior Principal Magistrate directing the release of motor vehicle registration number KDQ 482N upon photographing by the 2nd Applicant is hereby upheld and affirmed.
 - c. Each party shall bear their own costs.
27. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 2ND DAY OF MARCH, 2026



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R. NYAKUNDI

JUDGE

