



Koech v Republic & another (Miscellaneous Criminal Application E137 of 2025) [2026] KEHC 3060 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3060 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E137 OF 2025**

DR KAVEDZA, J

MARCH 5, 2026

BETWEEN

BENARD KIKORIR KOECH APPLICANT

AND

REPUBLIC 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 19th June 2025 seeking the immediate and unconditional release of Motor Vehicle Registration No. KFM 926, Green Land Rover '88', Chassis No. 111701532 and Engine No. 112700258, currently detained at Karen Police Station. The application is premised on the grounds therein and supported by the Applicant's affidavit sworn on even date.
2. The Applicant avers that vide a Sale Agreement dated 9th December 2020, he lawfully purchased the said motor vehicle from one Pius Oyuyo Obiero and has since been in lawful possession thereof. He annexed a copy of the Sale Agreement and proof of payment. Upon taking possession, he commenced the process of transfer by procuring a tape lift report from the Directorate of Criminal Investigations dated 22nd December 2020. Pending registration in his name, the Applicant utilised the motor vehicle in a transport business, primarily for commercial towing of vehicles with mechanical breakdown, as his source of livelihood.
3. On or about 15th March 2021, the Applicant was summoned to Karen Police Station by officers from the Directorate of Criminal Investigations. Upon attending, he was asked to disclose the location of the motor vehicle, which he did. The officers thereafter proceeded to the location and impounded the vehicle without, as alleged, lawful cause, explanation, or justification. The vehicle has remained detained at the station to date.



4. Despite several requests for its release, the officers have declined to do so. The Applicant states that he later learnt that the impoundment was linked to investigations arising from OB No. 15/3/9/2021, wherein a complainant alleged the offence of forcible detainer in respect of a parcel of land in Karen. The vehicle had allegedly been photographed while parked near the disputed property. The Applicant maintains that he is neither a suspect nor a complainant in the said matter and that no criminal proceedings have been instituted against him.
5. He contends that the motor vehicle is not the subject of any forfeiture proceedings, nor has it been required as an exhibit in any pending criminal case. No indication has been given by the Respondent that the vehicle will be produced as an exhibit. He further avers that investigations have since been concluded and the file closed with a recommendation that the complainant pursues civil remedies.
6. The Applicant asserts that the continued detention of the motor vehicle for over three years is unlawful, unjustified, and in violation of his right to property under Article 40 of *the Constitution* of Kenya, 2010. He has not been charged with any offence relating to the vehicle. He deposes that he has suffered substantial loss of user, financial hardship, and inconvenience, as the vehicle was his source of income. The vehicle continues to depreciate while in police custody.
7. The Applicant undertakes to cooperate fully with any further investigations and to produce the vehicle whenever required. He raises no objection to the Respondent taking photographs for evidentiary purposes. He urges the Court to find that the continued detention is unwarranted and to grant the orders sought, contending that the release of the motor vehicle will not prejudice any party and is in the interests of justice.
8. In response, the Respondent filed Grounds of Opposition dated 3rd December 2025 contending that the application is misconceived, lacks merit, and amounts to an abuse of the court process. The Respondent asserts that Motor Vehicle Registration No. KFM 926, Green Land Rover “88”, forms part of the estate of a deceased person and that ownership ought to be determined by a civil court. It is further contended that the Applicant has not obtained any civil court order granting him ownership and that the application should therefore be dismissed in its entirety.
9. In further support of the application, affidavits were sworn by Gideon Kigen and John Njehia Wanyoike, it was deposed that they personally witnessed the execution of the sale agreement between the Applicant and Pius Oyuyo Obiero,
10. The Applicant, in his further affidavit, reiterates that he purchased the motor vehicle on 9th December 2020 for Kshs. 130,000/=. He avers that he paid Kshs. 80,500 through NCBA Bank via Pesalink on 17th December 2020 and settled the balance through M-Pesa transfers to the vendor. He annexed proof of the said payments.
11. He further deposes that at the time of purchase the vehicle was not in good condition and was towed to his residence. Upon execution of the sale agreement, he took immediate possession. He confirms that the agreement was witnessed by Gideon Kigen and John Njehia Wanyeki, both of whom have sworn affidavits confirming the transaction.
12. The Applicant reiterates that the vehicle was impounded on or about 15th March 2021 by officers from Karen Police Station pursuant to a complaint alleging forcible detainer under OB No. 15/3/9/2021. He maintains that at the time of impoundment the vehicle was in his custody and was towed from his residence to the police station. He asserts that he is the bona fide purchaser and lawful owner of the vehicle and urges the Court to intervene and order its release so as to prevent further prejudice and economic loss.



13. I have considered the application, the supporting affidavit, the submissions on record and the applicable law. The issue for determination is whether the motor vehicle should be released to the applicant.
14. Under Article 40(1) of *the Constitution* of Kenya, 2010, every person has the right, either individually or in association with others, to acquire and own property of any description in any part of Kenya. Article 40(2)(a) further prohibits arbitrary deprivation of property. Any limitation to this right must be grounded in law and must be reasonable and justifiable.
15. The mandate of the National Police Service is set out under Article 244 of *the Constitution* and section 24 of the *National Police Service Act*, No. 11A of 2011 as follows:

“The functions of the Kenya Police Service shall be—

 - (a) the provision of assistance to the public when in need;
 - (b) the maintenance of law and order;
 - (c) the preservation of peace;
 - (d) the protection of life and property;
 - (e) the investigation of crimes;
 - (f) the collection of criminal intelligence;
 - (g) the prevention and detection of crime;
 - (h) the apprehension of offenders;
 - (i) enforcement of all laws and regulations with which it is charged; and
 - (j) performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.”
16. The core functions include maintaining law and order, preserving peace, protecting life and property, preventing and detecting crime, and apprehending offenders. The Police are investigative and enforcement agencies; they are not vested with judicial authority to determine proprietary rights in civil disputes.
17. Where property is suspected to be connected to a criminal offence, the Police may, pursuant to section 118 of the Criminal Procedure Code (Cap. 75), seek a warrant to search and seize property for purposes of investigations. The power to determine forfeiture or admissibility of exhibits lies with the court, not the Police.
18. In the present case, the Respondent has expressly indicated that there exists an ownership dispute and that the motor vehicle forms part of the estate of a deceased person. That assertion, by its very nature, places the dispute squarely within the realm of civil law, to be determined by a competent civil court. The Police have no statutory mandate to hold property indefinitely pending the resolution of a civil claim of ownership.
19. Crucially, the Respondent has not demonstrated that there is any pending criminal case before a court of law in which either the Applicant or the alleged vendor has been charged. Neither has it been shown that the motor vehicle is subject to forfeiture proceedings or that it is required as an exhibit in any ongoing prosecution. In the absence of a criminal charge, a court order for detention, or active



investigations necessitating its continued custody, the detention of the subject motor vehicle lacks legal foundation.

20. The Applicant has deponed that he purchased the vehicle for valuable consideration, paid the full purchase price, and took possession thereof. Possession, coupled with proof of payment, prima facie establishes a proprietary interest capable of protection under Article 40 of *the Constitution*. Pending any judicial determination of ownership by a civil court, that interest cannot be defeated by administrative action of the Police.
21. To permit the continued detention of the motor vehicle on the mere allegation of an ownership dispute would amount to allowing the Police to usurp the adjudicative function of the courts. Such action would be ultra vires their statutory mandate and contrary to the constitutional guarantee against arbitrary deprivation of property.
22. In the circumstances, and absent evidence of a subsisting criminal process lawfully requiring the vehicle's detention, the continued impoundment is unjustified. Any contest as to ownership must be ventilated before a competent civil court, and until such determination is made, the deteriorating motor vehicle ought not to remain in police custody.
23. Accordingly, I allow the application in the following terms:
 - i. The Officer Commanding Station (OCS), Karen Police Station and/or officers of the Directorate of Criminal Investigations, Karen, are hereby directed to forthwith release Motor Vehicle Registration No. KFM 926, Green Land Rover "88", Chassis No. 111701532 and Engine No. 112700258, currently detained at Karen Police Station, to the Applicant, Bernard Kipkorir Koech.
 - ii. The Applicant shall not sell, transfer, charge, dispose of, or otherwise part with possession of Motor Vehicle Registration No. KFM 926, Green Land Rover "88" pending the determination of any civil proceedings that may be instituted in respect of ownership thereof, or until further orders of the Court.
 - iii. For avoidance of doubt, the release of the said motor vehicle shall not prejudice the right of any party to institute or pursue appropriate civil proceedings to determine ownership, nor shall it bar any lawful criminal process should sufficient basis arise in accordance with the law.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MARCH 2026

D. KAVEDZA

JUDGE

In the presence of:

Nanda for the Applicant

Mutuma for the Respondent

Karimi Court Assistant.

