



she found it irregular and improper for the State to be paid for securing exhibits kept in its custody in criminal proceedings.

4. The parties then filed written Submissions. The Applicant's Submissions is dated 18/09/2025, while the Respondents' (State) is dated 6/10/2025. I however notice that although Prosecution Counsel **Ms. Muriithi** handed over to the Court a physical copy of her Submissions, the same has not been filed in the the online Judiciary Case Tracking System (CTS) portal as is now required. I will nevertheless consider the same, in the interest of justice, though with a reminder to litigants that in view of prevailing Court rules, pleadings only form part of the Court record when filed in the CTS.
5. I also note that the Applicant, subsequently, filed the Supplementary Submissions dated 14/10/2025. Although I cannot find any indication that the Applicant, in filing the Supplementary Submissions, sought or obtained the Court's leave, again, purely in the interest of justice, I will nevertheless consider the same.

#### **Applicant's Submissions**

6. Counsel for the Applicant submitted that the impugned order is irregular, improper, illegal and incorrect as it sets a dangerous precedent whereby the police and the **Kenya Forest Service** will henceforth seek payment for taking care of exhibits in their possession. He contended that the police and the **Kenya Forest Service** are public servants are sustained by the taxpayer when taking care of exhibits in their possession for purposes of the criminal justice system and that in doing so, they are discharging a public duty and are not entitled to compensation or payment for guarding or protecting such exhibits. He submitted that it is their duty to discharge, and they cannot pass the expense to the owners of the exhibits held by them.
7. In the Supplementary Submissions, Counsel urged that the **Kenya Forest Service** has declined to release the motor vehicle and insists that security costs, at its discretion, must be paid as ordered by the trial Court, but which order is ambiguous as to the amount payable. He urged that the **Kenya Forest Service** has refused to disclose the amount payable, there is also no provision in the **Criminal Procedure Code** or the **Kenya Forest Conservation and Management Act** imposing payment by the owner of a motor vehicle held by the Prosecution of costs of guarding an exhibit, and therefore, the assertion by the Prosecutor that the amount accrued is Kshs 1,030,000/- is not based on any law. He submitted further that the Applicant did not request for any services from the **Kenya Forest Service**, nor was she the accused person in the case. Counsel urged further that even if NCBA bank were to

pay the costs, the same will be debited into the Applicant's loan account, and ultimately therefore, the person who is affected by the order is the Applicant, and she is also the one who has been denied use of the motor vehicle, and the one ultimately expected to meet the cost.

### **Respondent's Submissions**

8. **Prosecution Counsel Ms. Muriithi**, on her part, submitted that the Applicant lacks standing to make the instant Application as she has not been directly harmed by the impugned Court order since the order was specific that it is NCBA that is to pay the accrued security charges, not the Applicant. She thus contended that even though a co-owner, the Applicant is not automatically liable for the debts of NCBA unless the Court order specified that they were jointly and severally liable, which is not the case here. She submitted further that even if the Applicant had locus, the Application is an afterthought, and should not absolve her of the pending payments. She urged that the custodian of any exhibits that are yet to be admitted into evidence is the Investigating Officer or the specific investigative agency, in this case, the 2<sup>nd</sup> Respondent, who then assumes responsibility for its safekeeping and production upon request, that once the exhibits are admitted into evidence, the Court takes charge of them and is responsible for their safekeeping unless, upon request, it orders that the same remains under the custody of the party producing it. She submitted that once the trial Court ordered that the motor vehicle be released to NCBA, the implication was that there was a transfer of responsibility for its handling and storage from the Court and 2<sup>nd</sup> Respondent to the owner, and as long as the motor vehicle remained in the 2<sup>nd</sup> Respondent's yard, it was at the owner's cost, and the Applicant, as the owner thereof carries the risk of storing it. She thus urged that since the Applicant failed to retrieve the vehicle in a timely manner, any damages, loss, or costs would still remain at her own risk, and that the 2<sup>nd</sup> Respondent has been ensuring that the motor vehicle is well secured awaiting its collection by NCBA, which had ample time to collect it from the day the order was made but has delayed in doing so. She submitted that, as it stands, in accordance with the 2<sup>nd</sup> Respondent's **Forest fees and Charges Regulations 2016**, the security fees payable from the date the order was made to date, is Kshs 1,030,000/-, plus other costs associated with safe keeping of the motor vehicle. She thus urged further that the 2<sup>nd</sup> Respondent has a legal basis to charge security fees as the continuous stay of the motor vehicle at its yard created the cost being demanded for, which payment will be payable under a civil claim, and therefore this Court cannot arbitrate on this issue, nor can it arbitrate on the inordinate delay to collect the motor vehicle.

### **Determination**

9. The issue for determination herein is “**whether this Court should invoke its revisionary powers over subordinate Courts and revise and set aside the lower Court’s order directing that the Applicant’s motor vehicle impounded for having been used in committing the offence herein, could only be released upon payment of security costs.**”
10. The jurisdiction of the High Court in respect to the powers of Revision is supervisory and is provided under the **Constitution in Article 165 (6) and (7)** in the following terms:

**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.”**

11. **Section 362 of the Criminal Procedure Code**, then provides as follows:

**Revision**

**362. Power of High Court to call for records**

**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.**

12. In considering applications invoking this Court’s revisionary powers therefore, the operative phrase is “***correctness, legality or propriety***” of any finding, sentence or order made by the lower Court. The purpose and nature of the revisionary jurisdiction of the High Court was then examined by **Odunga J (as he then was)**, in the case of **Joseph Nduvi Mbuvi vs Republic [2019] eKLR** as follows:

**“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.”**

13. On his part, **Nyakundi J**, in **Prosecutor vs Stephen Lesinko [2018] eKLR**, outlined the limited instances when the High Court may exercise its revisionary jurisdiction, to include, **(a) where the decision is grossly erroneous; (b) where there is no compliance with the provisions of the law; (c) where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record; (d) where the material evidence on the parties is not considered; and (e) where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.**

14. In this case, **Prosecution Counsel Ms. Muriithi** raised the challenge that the Applicant lacks the locus to make the instant Application because the order was specific that it is NCBA that is to pay the accrued security charges, and not the Applicant. I disagree. First, there being no dispute that the Applicant is the substantive owner of the vehicle, NCBA's name appearing therein as co-owner merely for purposes of securing repayment of the loan advanced against the title to the vehicle, the Applicant has full rights to protect her entitlement to the motor vehicle. There is no doubt that detention of the motor vehicle directly affects her rights thereto and the fact that she was not a party to the criminal case cannot in any way negate this right. There is therefore no doubt that she is the party directly affected by the order. As correctly submitted by **Mr. Momanyi**, Counsel for the Applicant, even if NCBA were to pay the security costs, NCBA will most probably still debit the paid amount to the Applicant's loan account, and ultimately therefore, the person who is affected by the order is the Applicant since it is to her that NCBA will pass the cost. Further, she is the person denied use of the motor vehicle, not NCBA. I therefore overrule the challenge raised on the basis of the Applicant's locus.

15. In respect to the substantive issues, it is not in dispute that upon conclusion of the criminal case, the trial Court, in agreeing not to order for forfeiture of the Applicant's motor vehicle to the State having been so persuaded by NCBA, and thus allowing the motor vehicle to be released, nonetheless imposed the condition that the motor vehicle be released only upon payment of costs incurred in providing security for the motor vehicle. No legal backing for making such order was however cited, nor was any formula for computing such security costs was given. In justifying the order, **Prosecution Counsel Ms. Muriithi** merely cited the

2<sup>nd</sup> Respondents' **Fees and Charges Regulations 2016** which, she alluded, generally, provides for payment of fees for provision of security by the 2<sup>nd</sup> Respondent. She did not however cite any specific provision thereof. I have perused the said **Regulations** and nowhere therein can I find any provision permitting the 2<sup>nd</sup> Respondent to charge a fee for storing or providing security for items impounded by it and stored for production in Court as exhibits, whether before, during, or after conclusion of the case. The **Regulations** only sets out fees for utilizing forest resources, and covers stumpage fees for timber, charcoal production/movement, and various forest products payable to the **Kenya Forest Service**. It does not anywhere address the issue of charging storage fees for storing exhibits or impounded items, and I have not been shown any.

16. In the absence of any cited provision of law justifying the impugned order, I am unable to avoid reaching the finding that the order was irregular and without any statutory support. As correctly argued by **Mr. Momanyi**, if allowed to stand, the order will mean that law enforcement agencies or government bodies exercising such statutory mandate, shall be charging fees for storage of exhibits detained or impounded for purposes of production as exhibits in legal proceedings. This, in my view, will be an untenable situation unless expressly allowed by legislation, which is not the case herein. As further correctly argued by **Mr. Momanyi**, the 2<sup>nd</sup> Respondent is a public entity discharging a public service, and it is sustained by the taxpayer when carrying out duties such as storing exhibits for purposes of production in a criminal case. There is no statutory provision cited that allows the 2<sup>nd</sup> Respondent, in discharging such duties, to demand for compensation or payment from owners of impounded exhibits for guarding or protecting exhibits. The impugned order cannot therefore stand.

17. **Prosecution Counsel Ms. Muriithi** submitted that once the trial Court ordered that the motor vehicle be released to NCBA, the implication was that there was a transfer of responsibility for its handling and storage from the Court and 2<sup>nd</sup> Respondent to the owner, and that therefore, as long as the motor vehicle remained in the 2<sup>nd</sup> Respondent's yard, it was stored at the owner's cost. While this may sound like a persuasive argument, it ignores the fact that there is no known legal framework permitting the charging of fees for storing exhibits, or even any statutory formula on how such payment, if made, is to be accounted for or utilized. The cost to be charged per day is therefore not set out under any law. I therefore agree with the Applicant that the figure of Kshs 1,030,000/- alleged by **Ms. Muriithi** to have accrued to date sounds arbitrary, and has no statutory backing. The illegality of the order cannot therefore be cured by the above arguments, no matter how attractive.

18. I must however fault the Applicant for coming to Court a whole 3 years after the order of the trial Court was made. I say so because while the order was made in September 2022, the Applicant filed the instant Application in July 2025. She has not even bothered to offer any explanation for that delay, which is clearly inordinate. Further, according to the impugned order, the cost of providing security was to only take effect from the date of the order and so no cost would have accrued had the Applicant promptly collected the motor vehicle after the order was made. It is this lethargy and inaction by the Applicant that has led to the huge amount now alleged to have accrued. I could have dismissed the Application on this ground alone, however, in light of the apparent irregularity and illegality of the impugned order of the trial Court, I will not hold this unexplained inaction against the Applicant.

19. In view of the foregoing, I find this to be a deserving case for invoking the exercise of this Court's supervisory revision jurisdiction.

**Final Orders**

20. The Notice of Motion dated 16/07/2025 therefore succeeds and I make orders as follows:

- i) Clause (2) and (3) of the Order made by the trial Court on 21/09/2022 in **Eldoret Chief Magistrate's Court Criminal Case No. 250 of 2020**, insofar as it directed that the motor vehicle registration number KCQ 020A impounded and/or detained by the 2<sup>nd</sup> Respondent, be released only upon payment of alleged costs of providing security accrued up to the date of release thereof, is hereby set aside and substituted with an order that the 2<sup>nd</sup> Respondent do release the said motor vehicle to the Applicant, **Gladys Kwamboka Kimori**, without any requirement for, or demand to the Applicant, to pay any such alleged costs of providing security.
- ii) Although the Applicant has been successful, owing to her unexplained inordinate delay to file the instant Application, and to promptly collect the motor vehicle, I deny her any costs. Each party shall therefore bear own costs of these proceedings

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026**

.....  
**WANANDA JOHN R. ANURO**  
**JUDGE**

**Delivered in the presence of:**

**Eldoret High Court Criminal Revision No. E164 of 2025**

**Mr. Wainaina for the Applicant**

**Ms. Muriithi for the State**

**C/A: Brian Kimathi**