

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO.E 196 OF 2025.

IN THE MATTER OF :CHAPTER FOUR, THE BILL OF RIGHTS, ARTICLES 19, 20, 21, 22, 23, 27(1), 28, 29(d)&(f), 40, 47, 50, 159(2) AND ARTICLES 165 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLES 19, 20, 21 , 22, 23, 27(1), 28, 29(d)&(f), 31, 40(1), 47 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

DANIEL GICHANA MBURU.....PETITIONER

VERSUS

PC KENNEDY OJWANG DIRECTORARE OF CRIMINAL

INVESTIGATIONS PARKLANDS..... 1ST RESPONDENT

THE OFFICER COMMANDING STATION

PARKLANDS POLICE STATION.....2ND RESPONDENT

THE DIRECTORATE OF CRIMINAL

INVESTIGATIONS OFFICER PARKLANDS.....3RD RESPONDENT

THE DIRECTOR GENERAL

NATIONAL TRANSPORT & SAFETY AUTHORITY.....4TH
RESPONDENT

THE HON.ATTORNEY GENERAL.....5TH RESPONDENT

ALLAN MWENDO MUSYOKA.....6TH RESPONDENT

JUDGMENT

Introduction and Background

1. The Petitioner instituted this constitutional petition alleging violation of his constitutional rights by the Respondents. The dispute arises from the detention of the Petitioner’s motor vehicle KDC 614S by the 1st to 3rd Respondents on grounds of an alleged fraudulent acquisition of the vehicle. The 6th Respondent had lodged a complaint with the police claiming that the Petitioner obtained the vehicle unlawfully.
2. Acting on this complaint, in July 2025, officers led by the 1st Respondent seized motor vehicle KDC 614S from the Petitioner and detained it at a police station. No criminal charges were immediately preferred against the Petitioner in connection with the vehicle’s acquisition.
3. Aggrieved by the continued detention of his vehicle, the Petitioner moved this Court for relief. On 15th September 2025, the Court granted a conservatory order releasing motor vehicle KDC 614S back to the Petitioner’s custody pending the hearing and determination of the petition. The vehicle was accordingly returned to the Petitioner, where it remains.

4. The Petitioner contends that the Respondents' actions in impounding and holding his vehicle violated his rights under the Constitution of Kenya, 2010 specifically: Article 40, Article 47, Article 28, Article 29(d) & (f), and Article 31. The Petitioner argues that the police had no lawful justification to deprive him of his vehicle without due process. He maintains that he is the bona fide registered owner of motor vehicle KDC 614S, yet the 1st to 3rd Respondents arbitrarily took it on the unsubstantiated assertion that it was acquired by fraud.
5. The Respondents oppose the petition. The Respondents admit that they detained the Petitioner's vehicle but assert that they did so pursuant to a complaint and ongoing investigations into possible fraud. They state that the 6th Respondent complained he had been defrauded of money in relation to the purchase of the vehicle.
6. The police argue that their actions were within their mandate to investigate crime and were thus lawful and justified. In their view, the Petitioner's property rights under Article 40 were not absolute in the face of allegations that the property was unlawfully acquired. They contend that any limitation of the Petitioner's rights was permissible in order to preserve the subject vehicle as potential evidence and to prevent its disposal pending the outcome of investigations.
7. In the petition, the Petitioner seeks various reliefs including: a declaration that the seizure and detention of motor vehicle KDC 614S violated his constitutional rights; a permanent order prohibiting the Respondents from further detaining or interfering with his vehicle except in accordance with the law; an order for compensation for the violation of his rights and for loss of

use of the vehicle during the period of detention; and an award of costs of the petition.

8. The Respondents urge that the petition be dismissed with costs, maintaining that no rights were violated and that the police action was in good faith and pursuant to statutory duties.
9. From the pleadings and submissions on record, the Court discerns the key Issue for Determination is Whether the seizure and detention of the Petitioner's motor vehicle (KDC 614S) by the 1st-3rd Respondents was unlawful and unconstitutional, in particular whether it violated the Petitioner's rights

Analysis and Determination

10. It is undisputed that the Petitioner's vehicle Registration No. KDC 614S was detained by police on 7 April 2025 after a complaint of a fraudulent sale, and that the Directorate of Criminal Investigations requested NTSA to place a caveat on its logbook. The 1st Respondent's affidavit confirms that by letter dated 26 March 2024 he wrote to NTSA: "RE: PLACE A CAVEAT ON MOTOR VEHICLE REG No. KDC 614S... [we are] investigating a case of stealing of a motor vehicle" and "1. Place caveat on the said motor vehicle". On its face this reflects an investigative measure to "prohibit any transfer of the subject motor vehicle pending investigations".

11. Article 40 of the Constitution guarantees the right to own property and provides that no person shall be "intentionally deprived of property" except by law. Detaining the Petitioner's car and blocking its transfer effectively deprived

him of use of his property. Although Section 57(2) of the NPS Act authorizes a police officer to “stop, search and detain any vehicle ... reasonably suspected to be used in the commission of an offence”, any deprivation must still conform to law and be temporary.

12. Here, the continued seizure and caveat were not ordered by any court and no charges have been filed. In ***Gikaru v NTSA & 3 others [2025]*** the High Court held that prolonged impoundment of a vehicle without charge “appears punitive and lacking any legal justification,” and that such detention “offends the principles of fair administrative action under Article 47... and undermines” Article 40 rights. The court further observed that the police had “no basis in law to continue holding private property where there is no ongoing criminal prosecution or investigation”. By parity, once the investigation stalled and no prosecution ensued, the Petitioner’s vehicle could not lawfully be retained or frozen by caveat. Absent a statutory forfeiture or court order, there was no legal authority to deny the owner the use or transfer of his property.

13. Detaining a private vehicle and imposing a caveat are administrative acts by the State. Article 47(1) requires that such administrative action be “expeditious, efficient, lawful, reasonable and procedurally fair,” with an aggrieved person entitled to be given written reasons and an opportunity to be heard. In this case the Petitioner received no prior notice or explanation from the police when his car was seized or caveated, nor was he afforded any hearing. This contrasts sharply with the requirement of fair process. As the court held in ***Abey & another v DCI [2024]***, secretive and non-participatory investigations into property rights breach Article 47: “*Investigations carried out*

secretly, selectively and without affording the subject a hearing are in breach of Article 47". The **Abey(supra)** judgment emphasized that where an administrative action like an investigation or a restraint on property will adversely affect someone, the Fair Administrative Action Act (2015) and Article 47 demand "prior and adequate notice" and "an opportunity to be heard".

14. Here, the Petitioner was not informed of the 6th Respondent's complaint or given any chance to dispute it before his vehicle was impounded and caveated. He only learned of the caveat when he checked NTSA records. Such one-sided action is procedurally unfair and violates the constitutional right to fair administrative action.

15. While the NPS Act empowered the police to detain the vehicle on suspicion under Section 57, it did not itself authorize placing an indefinite caveat. The police correctly point to an "investigative mandate," but under Article 10 every exercise of public power must have legal authorization. No provision of the Criminal Procedure Code or the NPS Act expressly allows the police to order NTSA to freeze vehicle transfers. The closest analogue in law is a court-ordered preservation of evidence, but that requires court proceedings as outlined in the CPC s.121 on detention of seized items.

16. Here no court application was made. The only legal basis the Respondents cite is Section 278A of the Penal Code and the general power of the DCI to investigate. Even if suspected fraud could justify a short detention for inquiry, it does not sanction prolonged restraint without charge. After the initial stop,

the police should have either charged the Petitioner or released the vehicle. Instead, it has languished in custody and under caveat. This exceeds the scope of lawful detention.

17. Accordingly, the actions were tainted by illegality. The police affidavit claims the caveat is “legal and justifiable”, but that assertion rests on no statute. In the absence of any legal rule or court order permitting a caveat, the caveat was effectively an ultra vires action. Moreover, Article 47 requires reasons be furnished for adverse action; none were given to the Petitioner. The caveat prevented the Petitioner from selling or using his vehicle, yet no process was followed to justify this interference. In sum, the Respondents acted outside the bounds of their lawful powers: the detention became punitive and arbitrary, and the caveat was imposed without lawful authority or fair procedure.

18. For these reasons, the detention of the Petitioner’s vehicle and the placement of a caveat violated his constitutional rights. The continued impoundment and transfer-block were neither “in accordance with the law” nor conducted in a “lawful, reasonable and procedurally fair” manner (Article 47). They infringed the Petitioner’s right to property and to fair administrative action. The Respondents’ conduct thus cannot be sustained as lawful.

Appropriate Reliefs

19. Article 23(3) of the Constitution empowers this Court to grant appropriate relief, including declarations of rights, if a violation is found. In view of the

analysis above, the Petitioner is entitled to a declaration that his constitutional rights were violated by the Respondents. Specifically, this Court declares that the actions of the 1st - 3rd Respondents in seizing and detaining motor vehicle KDC 614S without following due process violated the Petitioner's rights under of the Constitution.

20. The vehicle KDC 614S has already been released to the Petitioner pursuant to the interim conservatory order of this Court. That order was interlocutory in nature. Given the findings now reached, this Court orders that the motor vehicle KDC 614S shall remain in the Petitioner's possession, and the Respondents jointly and severally are prohibited from impounding, detaining, or otherwise interfering with the Petitioner's ownership or use of the said vehicle on the basis of the 6th Respondent's complaint or the same facts, unless they do so in strict compliance with the law and pursuant to a court order or criminal process sanctioned by the Director of Public Prosecutions.

21. Absent of new and compelling evidence that would lawfully warrant a fresh seizure, the Respondents must refrain from any further violation of the Petitioner's property rights in relation to this vehicle.

22. The Petitioner sought an award of general damages to compensate for the violation of his rights and the loss of use of his vehicle. In constitutional petitions, an award of damages is discretionary and aimed at vindicating rights and providing remedy for actual loss suffered. The guiding principle, as always, is that there is "no wrong without a remedy." The Court has found that the Petitioner was wronged by the Respondents' actions. He was deprived of his

vehicle, during which he lost income and was put to great inconvenience. Moreover, he suffered a violation of intrinsic constitutional rights which cannot be fully compensated by monetary value. Nonetheless, an award can serve both to recognize the infringement and to deter future abuses.

23. The Petitioner proposed a sum of Ksh 1,000,000, referencing *Ibrahim v KRA [2025]*, where the Court awarded Ksh 500,000 for a three-year detention of a commercial lorry. In *John Mbaabu v KRA [2020]*, a sum of Ksh 2,000,000 was awarded for a detention of less than one year. In the present case, the Petitioner did not furnish detailed proof of specific financial loss. However, the fact of some loss is evident that even the police acknowledged the vehicle was used by the Petitioner, presumably for daily transportation needs or business. Considering all factors, the Court is of the view that a moderate award of general damages is appropriate, primarily for the infringement of constitutional rights. I assess Kshs. 500,000 as reasonable general damages in this case. This sum takes into account the relatively short duration of the detention as compared to other cases, while also signaling that even short-lived violations of rights are not trivial. It will also somewhat offset the Petitioner's loss of use of the vehicle in those two months.

24. The award is jointly and severally payable by the Respondents.

Final Disposition

25. In light of the findings and analysis above, the Court enters Judgment in favour of the Petitioner. Accordingly:

- a. A declaration be and is hereby issued that the seizure and detention of the Petitioner's motor vehicle Registration No. KDC 614S by the 1st to 3rd Respondents was unconstitutional and unlawful, and amounted to a violation of the Petitioner's fundamental rights and freedoms – specifically his rights under Article 40 of the Constitution, Article 31(b), Article 47, and Article 28.
- b. The interim conservatory orders previously issued by this Court regarding the release of motor vehicle KDC 614S to the Petitioner are hereby confirmed and made permanent.
- c. The Petitioner shall retain possession and ownership of motor vehicle KDC 614S. The Respondents, whether by themselves or through their agents, are restrained from impounding, seizing, detaining or in any way interfering with the Petitioner's ownership, use and possession of the said vehicle on the facts underlying this matter, except in strict compliance with the law.
- d. The Petitioner is hereby awarded general damages of Kshs. 500,000/-. This amount shall attract interest at court rates from the date of this judgment until payment in full.
- e. The Petitioner is awarded the costs of this petition, to be borne by the Respondents jointly and severally.

Orders accordingly. File Closed Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF FEBRUARY 2026

.....

BAHATI MWAMUYE MBS

JUDGE