

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CONSTITUTIONAL, HUMAN RIGHTS & JUDICIAL REVIEW**  
**DIVISION**  
**CONSTITUTIONAL PETITION NO. 122 OF 2020**

NAJMA JUMA HASSAN.....1<sup>ST</sup> PETITIONER/RESPONDENT  
FATMA AKASHA.....2<sup>ND</sup> PETITIONER/RESPONDENT  
-VERSUS-  
DIRECTOR OF PUBLIC PROSECUTIONS .....1<sup>ST</sup> RESPONDENT  
INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS.....3<sup>RD</sup> RESPONDENT  
INCHARGE ANTI NARCOTICS UNIT.....4<sup>TH</sup> RESPONDENT  
COAST REGION POLICE COMMANDER.....5<sup>TH</sup> RESPONDENT  
COAST REGION REGIONAL  
CRIMINAL INVESTIGATIONS OFFICER.....6<sup>TH</sup> RESPONDENT

**RULING**

1. There are two applications before court; the first one is by Najma Juma Akasha and Fatma Akasha, the petitioners in the main petition. Their application is dated 24 May 2024. The 2<sup>nd</sup> application is by the Director of Public Prosecutions and is dated 20 June 2024.
2. The first application is expressed to be brought under Rules 3,4,5,17 and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms, and Enforcement of The Constitution) Practice and Procedure Rules. The main prayers have been couched as follows:

*“b) That pending the hearing and the determination of this application inter partes this Honourable Court do issue an order to the 2<sup>nd</sup>, 3<sup>rd</sup>,4<sup>th</sup>,5<sup>th</sup> & 6<sup>th</sup> respondents for surrender to the*

*Deputy Registrar of this Court the applicants/petitioners properties to wit;-*

*a. One (1) hand Gold chain with coins.*

*b. Seven (7)Gold chains*

*c. Seven (7) Gold earring sets*

*c) THAT pending the hearing and the determination of this' application this Honourable Court do issue inspection orders to the applicants/petitioners to inspect their properties held in custody of 2<sup>nd</sup>, 3<sup>rd</sup>,4<sup>th</sup>,5<sup>th</sup> & 6<sup>th</sup> respondents to wit;-*

*a. Motor Vehicle registration No. KBU 900Y - Toyota Land Cruiser*

*b. Apple I - Phone*

*c. Log book for motor vehicle No. KBN 085N*

*d. Motor vehicle registration No. KBN 085N Toyota Alphard.*

*d) That at the hearing hereof this Honourable Court be pleased to release to the*

*applicants/petitioners their properties to Wit;*

*a. One (1) hand Gold chain with coins.*

*b. Seven (7)Gold chains*

*c. Seven (7) Gold earring sets*

*d. Motor Vehicle registration No. KBU 900Y - Toyota Land Cruiser*

*e. Apple I - Phone*

*f. Log book for motor vehicle No. KBN 085N*

*g. Motor vehicle registration No. KBN 085N Toyota Alphard*

*e) That the items recovered vide inventory dated 9<sup>th</sup> November 2014 be returned to the applicants/petitioners forthwith.”*

3. The application is based on the affidavit of Najma Juma Hassan who has sworn that she is married to one Baktash Akasha Abdalla and, together, they are blessed with Seven(7) Children. Their Matrimonial home is at Plot No. 5075 is at Nyali Voyager in Nyali Sub-County, Mombasa County.
4. At the time of filing the application, Najma’s husband was serving a 25 year jail term in the United States District Court Southern District of New York.
5. The extradition proceedings against the deponent’s husband and her brother-in-law, one Ibrahim Akasha, were in Miscellaneous Application No. 356 of 2014, apparently in Mombasa Chief Magistrate’s Court. In the course of the proceedings, and more particularly on 9 November

2014, the petitioners' home was raided by the police who confiscated certain items or property.

6. However, some of the seized items were returned to the deponent while the rest were retained by the respondents who maintained that those particular items were exhibits in the extradition proceedings. Najma has sworn that despite the conclusion of the extradition proceedings, the respondents did not release the items and that the items were never used as exhibits in the extradition proceedings, in any event.
7. On 17 September 2019, this Honourable Court directed the applicants to move the magistrate's court for the release of the items held by the state as exhibits in the extradition proceedings.
8. Again, by a judgment delivered by this Honourable Court (Ogola, J.) on 8 November 2023, the respondents were ordered to initiate forfeiture proceedings within 60 days from the date of judgment failure of which the petitioners were at liberty to make an application for release of the items. However, to date, no forfeiture proceedings have been taken. It is for this reason that the petitioners have filed their application.
9. The application by the Director of Public Prosecutions, on the other hand, is expressed to have been brought under article 159 of the Constitution and Sections 1A, 3A, of the Civil Procedure Act, cap. 21; and Order 51 Rule 1 of the Civil Procedure Rules. The applicant seeks the order:

***“2. That this Honourable Court be pleased review its orders issued on 9<sup>th</sup> November, 2023 and extend the time granted to Respondents/Applicants for filing of forfeiture proceedings by 60 days.”***

10. The application is supported by the affidavit of Ms. Maureen Anyumba, a prosecution counsel in the office of the Director of Public Prosecutions.

11. According to Ms. Anyumba, the respondents instituted extradition proceedings against one Baktash Akasha Abdalla who is the husband to Najma Juma Hassan, the 1<sup>st</sup> petitioner in these proceedings. Mr. Akasha Abdalla was under investigations for drug trafficking, offences under the Proceeds of Crime and Anti-money Laundering Act, cap.59A and offences under the Prevention of Organized Crimes Act 2010.

12. The learned counsel has admitted that indeed on 9 November 2014, a search was conducted at the residential premises of Mr Baktash Akasha Abdalla whereof several assets were seized and inventorised.

13. Mr Baktash Akasha Abdalla together with Ibrahim Akasha Abdalla were consequently charged in the United States District Court at Southern District of New York USA, in case number 14 CR 716. Although a plea bargain agreement was entered between the United States of America and Baktash Akasha Abdalla, the latter was convicted of drug offences,

firearm offences and corruption and bribery offences. He was sentenced to serve 25 years imprisonment.

14. According to Ms. Anyumba, the petitioners, being respectively wife and mother to Baktash Akasha Abdalla, filed the present petition seeking that the properties that were confiscated be released to them. The petition was heard and determined by Ogola, J. who delivered his judgment on 9 November 2023.

15. The judgment was delivered in Nairobi in the absence of all parties and without notice to them. Neither was a copy of the judgment delivered to the parties. In the judgment, the respondents were directed to file forfeiture proceedings within 60 days of the date of the judgment failure of which the petitioners were entitled to file an application for the restoration of the properties to them.

16. The respondents could not comply with the directions of the court because the judgment was only brought to their attention when they were served with the petitioners' application dated 24 May 2024 on 6 June 2024. Ms. Anyumba contends that the respondents are intent on complying with the directions of the court and filing the forfeiture proceedings accordingly. It is for this reason that they seek extension of time to file the proceedings.

17. It sworn further that following the conviction of Mr. Baktash Akasha, the seized exhibits are deemed proceeds of crime and are consequently

subject to forfeiture by the state. The respondents have already engaged the Asset Recovery Agency for purposes of instituting the forfeiture proceedings.

18. The petitioners did not file any response to the respondent's application.

There is also no evidence that the respondents were notified of the judgment in this matter. Thus, the respondents' contention that they only learnt of the judgment on 6 June 2024 when they were served with the petitioners' application of 24 May 2024 has not been controverted.

19. That being the case, the respondents cannot be faulted for failing to

comply with the court's directions and file the forfeiture proceedings within the prescribed time when they were not aware of those directions.

I also note that the respondents filed their application for extension of time soon after they learnt of this Court's judgment. In these circumstances, I am satisfied that the respondents have made out a case for the extension of time to comply with the court's directions given on 9 November 2023. Their application is allowed and time prescribed by the court will start to run from the date of this ruling.

20. Having allowed the respondents' application, the petitioners' application

fails. In any event, I understood the petitioners to say that their application was to be filed in the extradition proceedings. In paragraph 11 of her affidavit Ms. Najma swore as follows:

*“That on 17<sup>th</sup> September 2019, the DPP withdrew its review before the High Court and the presiding Judge directed that move the lower court for release of my items held by the state as exhibits in the extradition proceedings. (Annexed herewith is a copy of the said court order and marked as “NJH-4”)*

21.If the petitioners were directed to file their application in the lower court, I do not understand why they found it necessary to file it in this Honourable Court.

Parties will bear their respective costs. Orders accordingly.

**Signed, dated and delivered on 13 March 2026**

Ngaah Jairus  
**JUDGE**