



**Sapanza v Republic (ODPP) & 2 others (Criminal Appeal  
E048 of 2025) [2026] KEHC 3683 (KLR) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3683 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CRIMINAL APPEAL E048 OF 2025**

**FR OLEL, J  
MARCH 18, 2026**

**BETWEEN**

**JIRMO SAPANZA ..... APPELLANT**

**AND**

**REPUBLIC (ODPP) ..... 1<sup>ST</sup> RESPONDENT**

**THE DCIO, TURBI ..... 2<sup>ND</sup> RESPONDENT**

**THE OCS, TURBI ..... 3<sup>RD</sup> RESPONDENT**

***(BEING AN APPEAL ARISING FROM THE RULING, DIRECTIONS AND CONSEQUENTIAL ACTION OF HON A.K AROME (PRICIPAL MAGISTRATE), DATED 21<sup>st</sup> AUGUST 2025 IN MARSABIT PRINCIPAL MAGISTRATE COURT MISC CRIMINAL CASE NO E027 OF 2025)***

**JUDGMENT**

**A. Introduction**

1. The Appellant herein, jointly with one HALKANO ROB BAGAJA did file their Notice of Motion Application in Marsabit Misc. Criminal Application No E027 of 2025 under provisions of Section 118 and 121 of the Criminal Procedure Code and Section 180 of the *Evidence Act*, where they sought for several (16) orders but primarily they all related to the primary prayer; that the Honourable court be pleased to issue a release Order directing the OCS -Turbi police station to release Motor vehicle registration KBR 648V ( hereinafter referred to as the suit Motor vehicle) to the 1<sup>st</sup> Applicant in the said application.
2. It was their contention that the said suit motor vehicle was seized on 30.10.2024 and unlawfully detained at Turbi Police station for a period of over seven (7) months without any court warrant thereby violating their right to property as contemplated under Article 40(2) of *the Constitution* of



Kenya. During this period no substantive charge had been leveled against them by the police and despite several pleas to have the said motor vehicle released the police had refused to do so.

3. To their knowledge the said motor vehicle had not been involved in any crime the basis for which it could be detained and thus urged the court to order the respondents to unconditionally release the said Motor vehicle. On 5<sup>th</sup> August 2025 the trial Magistrate did grant the Appellant the release order they requested for but later 21<sup>st</sup> August 2025, upon oral submissions by the state did rescind the said order resulting in filing of this Appeal.

## **B. The Appeal**

4. The Appellant, being dissatisfied by the trial Magistrates Order did file his petition of appeal and raised the following grounds of appeal;
  - a. That the learned trial Magistrate erred in law by entertaining, considering, and acting upon a request for stay of execution of the order issued on 5<sup>th</sup> August 2025, in the absence of any application for review or any stay order issued by the High court, thereby acting without jurisdiction and in violation of the doctrine of functus office.
  - b. That the trial Magistrate misdirected himself in law by allowing a verbal and informal request for stay of execution, unsupported by any pleadings, affidavits or legal basis, contrary to mandatory procedural requirements and established principles of criminal procedure.
  - c. That the learned Magistrate violated the Appellants right to fair hearing by effectively suspending the court order without granting the Appellants an opportunity to meaningful contest the request for stay, thereby acting in breach of Article 50(1) of *the Constitution*.
  - d. That the learned Magistrate erred in law and principle by purporting to review, vary or suspend a final order without identifying any error apparent on the face of the record, discovery of new evidence, or sufficient cause.
  - e. That the learned Magistrate erred in law and fact by failing to enforce a valid and subsisting court order issued on 5<sup>th</sup> August 2025, thereby undermining the authority, dignity and finality of the judicial decisions.
  - f. That the learned Magistrate misdirected himself by permitting reliance on alleged discrepancies in Motor vehicle logbook particulars, which matters; Were not part of the original criminal inquiry; Were not pleaded in the application before the court, and Are civil and administrative in nature thus amounting to consideration of irrelevant and extraneous factors
  - g. That the learned Magistrate failed to appreciate that the continued detention of the Appellants motor vehicle for several months, in the absence of charges or evidentiary necessity, was unreasonable, oppressive and unlawful, contrary to settled legal principles governing seizure of property.
  - h. That the learned Magistrate failed to safeguard the Appellants constitutional rights under; Article 40 (right to property), and Article 47 (right to fair administrative action), thereby sanctioning arbitrary and unjustified state action.
  - i. That the learned Magistrate exercised judicial discretion injudiciously, by favouring unsupported assertions by the respondents over a valid court order, without weighing proportionality, necessity, or prejudice to the Appellants.



- j. That the learned Magistrate erred in law by allowing the respondents to circumvent proper appellate and revisionary procedures, thereby facilitating and abuse of the court process and setting a dangerous precedent whereby court orders maybe ignored with impunity.
  - k. That the learned Magistrate failed in his constitutional duty to uphold the rule of law by permitting a lawful court order to remain unenforced for over forty-five (45) days thereby eroding public confidence in the administration of justice.
  - l. That the learned Magistrate misdirected himself by shifting the burden to the Appellants to justify the validity of a court Order already issued, instead of requiring the respondents to demonstrate lawful grounds for non-compliance.
  - m. That the leaned Magistrate failed to appreciate that once the purpose for which property seized has been exhausted, continued detention becomes unlawful, and courts are duty bound to order release.
  - n. That the learned Magistrates action, taken as a whole, were against the weight of the law, the evidence on record, and established constitutional principles and resulted in Miscarriage of justice.
5. The Appellant therefore prayed that his Appeal be allowed, and that this court be pleased to set aside the trial court's order dated 21<sup>st</sup> August 2025 and reinstate the order dated 5<sup>th</sup> August 2025 directing the DCI to release the suit Motor vehicle.
  6. In opposing this Appeal, the state filed a replying affidavit sworn by one Chief Inspector Bonface Ileri, the SCCIO Turbi DCI, who deponed that it was indeed true that the suit motor vehicle was being held at Turbi police station following a shooting incident along Marsabit-Moyale highway near Turbi township.
  7. Despite issuing the release order, the trial court subsequently for reasons outlined before the said court did allow them to continue to detain the suit motor vehicle since its chassis number had been welded, thus clearly tampered with, it had fake registration number plates, which could not be verified against the tampered chassis number and also had visible bullet holes making it a crime scene. The trial Magistrate was not aware of these facts when he had initially ordered for the release of the said motor vehicle and upon presentation of the said facts was justified in staying his earlier decision.
  8. The trial court had inherent powers to set aside its orders, where a prima facie case had been presented and, in this instance, could not be faulted for so doing. They thus urged the court to find that the Appeal lacked merit and be pleased to dismiss the same.

### **C. Determination**

9. This being the first appeal, this court is expected to re-evaluate the evidence tendered before the trial court and to come up to its own logical conclusion by taking into account the fact that it did not have the advantage of seeing and hearing the witnesses and their evidence, and/or see their demeanor. This court is guided by various established citations, including Okeno Vs. Republic (1927)E.A 32 & Pandya Vs. Republic (1975) EA 366 & Peter's vrs Sunday Post(1958) E.A. 424
10. The appellant's main compliant in this Appeal is that the trial Magistrate exercise his discretion unjustly by staying his previous decision dated 5<sup>th</sup> August 2025 to have the suit motor vehicle released to them based on an oral application by the ODPP, yet there was no error apparent on the face of the record, discovery of new evidence and/or sufficient cause shown to justify the same.



11. By doing so, the trial Magistrate had failed to appreciate that the continued detention of the suit motor vehicle in absence of preferred charges was unreasonable, oppressive and unlawful, contrary to the settled principles governing seizure of property. First and foremost, Under Section 349 of the Criminal Procedure Code (CAP 75), an appeal must be filed within 14 days of the order or sentence being appeal against. In this instant the order appeal from was made on 21<sup>st</sup> August 2025, while this Appeal was filed on 16<sup>th</sup> December 2025, without leave of the court, rendering the same to be a nullity abinitio.
12. Be that as it may, while filing a formal application is usually preferred, it is my finding that there is nothing fundamental wrong in the trial court entertaining an oral application to stay its prior decision if cogent/valid grounds are advanced. In this instance, the said oral application was made in the presence of the Appellant and justified ground were advanced to convince the trial court so act.
13. Finally on 14<sup>th</sup> October 2025 after the impugned order had been issued, the Appellant informed the trial court that the, “case is finished. The vehicle KBV 648V is registered in the name of Halkano Rob Bajaga, I have forwarded the logbook for registration,” and the court directed the owner to follow up with NTSA to rectify the issue.

### **C. Disposition.**

14. I do therefore find that this Appeal lacks merit and the same is dismissed on the grounds that the Appeal was filed out of time without leave of the court, the Appellant had admitted that he does not own the suit motor vehicle and that the grounds raised lack merit.
15. Right of Appeal 14 days.
16. It is so ordered

**JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT AT MARSABIT THIS 18<sup>TH</sup> DAY OF MARCH 2026.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Teams this 18<sup>th</sup> day of MARCH 2026.

In the presence of;

Present in court ..... Appellant

Mr. Mburugu .....For O.D.P.P

Mr. Jarso .....Court Assistant

