

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ISIOLO**  
**CRIMINAL REVISION NO. E022 OF 2026**  
**G4S KENYA LIMITED .....**

**APPLICANT  
VERSUS**

**REPUBLIC .....**

**RESPONDENT  
RULING**

1. The Application herein concerns the fundamental principles of the right to property and the right to a fair trial, specifically whether a subordinate court can summarily order the forfeiture of an asset belonging to a third party , who was not a party or an accessory to a crime.
2. The Applicant herein has moved this Court vide a Chamber Summons dated 15<sup>th</sup> January 2026, seeking the following reliefs:
  - 1). *Spent*
  - 2). *spent*
  - 3). *spent*
  - 4) *This Court be pleased to call for and examine the record of proceedings in Isiolo Chief Magistrate’s Court Criminal Case No. E117 of 2022.*
  - 5) *This Court be pleased to revise and set aside the ruling and order of the Chief Magistrate’s Court at Isiolo (Hon. L. Mutai- CM) delivered on 8<sup>th</sup> January 2026 insofar as it orders forfeiture of motor vehicle registration number KCB 973W to the State. In particular, the Court be pleased to quash the forfeiture order in respect of motor vehicle registration number KCB 973 W*

- 6) *This Court do order for the unconditional release of the motor vehicle registration number KCB 973W to the applicant herein*
- 7) *The logbook for the said motor vehicle deposited with the investigating officer at Archers Post Police Station be released to the applicant.*
- 8) *The cost of this application be provided for.*

3. The application is supported by the affidavit of Joseph M. Guama, the Operations Manager of G4S Kenya Limited, the Applicant herein.
4. It is the Applicant's case that it is the registered owner of the subject motor vehicle, which was intercepted by the police, while being driven by its employee, one Erastus Nyamu. The employee was found to have been carrying counterfeit goods. The Applicant states that the carriage of the goods was without its knowledge or consent.
5. The Applicant contends that while the driver was charged and convicted, the Applicant was never charged, implicated, or investigated. Despite this, the learned trial Magistrate dismissed their application for the release of the vehicle and ordered its forfeiture to the State.
6. The Applicant further submits that the impugned ruling relied on Sections 197 and 201(1) of the Excise Duty Act, 2015, provisions which do not exist in the said statute, rendering the order a patent illegality.
7. It is argued that forfeiture is a discretionary remedy and cannot be an automatic consequence of a conviction, especially where third-party property is involved. Reliance was placed on **Aden Issak Ibrahim v Republic (2016) eKLR**, where the court held that forfeiture of property belonging to a person

who is not an accused can only occur after the court has conducted an inquiry into ownership and afforded the owner an opportunity to be heard.

8. The Applicant contends that that the forfeiture goes far beyond the legitimate aims of enforcement under excise legislation and results in consequences that are punitive, excessive and disproportionate to the wrong doing established against the accused person.
9. The Applicant urges this court to allow the application, set aside the forfeiture order made on 8<sup>th</sup> January and direct the unconditional release of motor vehicle registration number KCB 973W and its original logbook to the Applicant in the interests of legality, fairness and justice.
10. The Respondent, through the Affidavit of Michael Kamau and through oral submissions by the prosecution counsel , Mr. Majale, opposed the application. The Respondent argues that Section 46 of the Excise Duty Act, 2015, allows for the continuation of penalties even in the new enactment and that the trial court has the right, upon conviction, to order the subject matter forfeited to the State.
11. It is the Respondent's further contention that the application is time-barred as the Applicant had probable notice of the proceedings and should have made their case at the trial stage. The State suggests the current application is an afterthought and is not brought in good faith.

### **Analysis and Determination**

12. I have considered the Chamber Summons, the Applicant's written submissions, the Respondent's

oral arguments, and the authorities cited, and I have identified the following issues for determination:

- a) *Whether this Court should exercise its revisionary jurisdiction.*
- b) *Whether the order of forfeiture had a statutory basis*
- c) *Whether the forfeiture order against a 3<sup>rd</sup> party was lawful and proper*
- d) *What appropriate orders should the court issue.*

*Whether this Court should exercise its revisionary jurisdiction*

13. The high court Revision jurisdiction is founded on Article 165(6) and (7) of the Constitution and sections 362 and 364 of the Criminal Procedure Code. The aforesaid provisions of the law empower the High Court to call for and examine the record of any criminal proceedings before a subordinate court to satisfy itself as to the *correctness, legality or propriety* of any finding, sentence or order.

*Whether the forfeiture order had a statutory basis*

14. In making an order for forfeiture, the trial court based its decision on Sections 197 and 201(1) of the Excise Duty Act, 2015. A perusal of the Excise Duty Act, 2015 (Cap 472) reveals that no such sections exist. This renders the foundation of the forfeiture order legally untenable. It is a cardinal principle of law that judicial orders must be anchored on existing and applicable statutory provisions. An order founded on non-existent provisions is not merely erroneous—it is a nullity.
15. Further, it is a well-settled principle of law that that jurisdiction must be exercised within the

confines of the constitution and other existing legislation. Purporting to apply non-existent law is a patent error on the face of the record that renders the resulting order illegal and void *ab initio*.

16. The Respondent has sought to justify the forfeiture on the basis of section 46 of the Excise Duty Act, such justification cannot cure an order that was made *ab initio* without a legal foundation. The order was illegal, improper and unjust.

*Whether the forfeiture order against a 3<sup>rd</sup> party was lawful and proper*

17. Article 40 of the constitution protects every persons property and prohibits arbitrary deprivation without any lawful cause or justification The Applicant was not a party to the criminal trial, or conviction and there was no suggestion or implication that it was an accessory to the crime. The motor vehicle was being driven by an employee who has since been charged and convicted.
18. Further forfeiture is not automatic upon conviction and must be exercised judiciously, especially where third-party rights are implicated. From the record, the Applicant made an Application for release of the vehicle after the conviction of its employee. They produced a logbook showing that it was the registered owner of the subject motor vehicle. There was no evidence that the Applicant was an accessory to their employee's crime, as aforesaid.

19. The respondent does not dispute the fact of ownership of the subject vehicle by the Applicant or the submission by the Applicant that they had nothing to do with their employee criminal acts. The respondent simply insist that the vehicle was the conveyor of counterfeit goods and that the vehicle had been produced as an exhibit. In other words the respondent did not address the question of deprivation of the Applicant's property without any cause , a deprivation which runs afoul Article 40 of the constitution.
20. The Respondent argued that the Applicant ought to have raised its claim before the trial court. However, revision jurisdiction is specifically designed to cure illegalities, improprieties and irregularities. Where an order is patently unlawful, a Court should not decline to intervene merely on account of delay, particularly where fundamental rights are infringed or under the risk of infringement.
21. The Court reiterates that forfeiture, particularly involving third-party property, must be exercised strictly within the law and with due regard to constitutional safeguards. Courts must guard against punitive excesses that undermine property rights and due process
22. The Application is merited, and accordingly the following orders are hereby issued:
- a). The ruling of the Chief Magistrate's Court at Isiolo delivered on 8th January 2026, is hereby set aside, and the forfeiture order in respect of motor vehicle registration number KCB 973W is hereby quashed.

b). An order is hereby issued for the unconditional release of motor vehicle registration number KCB 973W and the log book for the said vehicle , forthwith.

Dated, signed and delivered virtually at Nairobi this 31<sup>st</sup> day of March 2026.

S. Chirchir

Judge.

In the presence of :

Ismail Adow- Court Assistant.

Mr. Mwiti - for the Applicant.

---

ORIGINAL