



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

CRIMINAL CASE NO. E1171 OF 2024

REPUBLIC..... PROSECUTOR

-VERSUS -

SIMON MUNENE.....ACCUSED

-AND-

MARK NDOLO DEYA.....

APPLICANT

RULING

The applicant Mark Ndolo Deya in his application dated 08/09/2025 brought by way of notice of motion against the Republic of Kenya seeks for the following substantive orders:

1. That the Honorable Court be pleased to order for the release of motor vehicle registration number KDA 704Q to the Applicant and be presented before the Court whenever required.

2. That the Court be further pleased to make or grant any other order/relief as it may deem just and fair to meet ends of justice.

3. That the costs of this Application be provided for.

The applicant's case is that he is the registered owner of the motor vehicle registration number KDA 704Q, being the subject of the matter herein. That the said motor vehicle was intercepted and seized by Kenya Wildlife Service (KWS), Nakuru, over a year and a half ago, on allegations of having been used in connection with the offences herein and later on had the current charges preferred against the accused persons who was just a driver of the said vehicle, ferrying goods belonging to one Mr. Simon Moyi. That since the time of the seizure, the said vehicle is still held at the KWS yard, Nakuru, rotting away at the expense of livelihood of the Applicant and his dependants, thus subjecting him to grave injustice as he continues to suffer substantial loss of use and the vehicle is equally at the risk of damage and pilferage of its parts. That the applicant is willing and ready to abide by the conditions that may be set by this Honorable Court should the court deem it fit to release the vehicle pending the determination of this matter.

That should the orders sought herein not be urgently granted, the applicant stands to suffer, which he already has. That the state, on the other hand, shall not be prejudiced in any way if the orders sought are granted. The respondent put in a replying affidavit of the investigating officer, No. KWS/ 7954 CPL Calvince Bolo, opposing the application.

Learned counsel for the applicant has submitted that the application herein is merited and warrants the release of the subject motor vehicle pending hearing and determination of the suit herein. Learned counsel submitted that as at the time of the accused person's arrest, the applicant was not in control of the subject vehicle, but his driver, the accused person. That the applicant should not therefore be subjected to unjustified suffering through continued detention of his vehicle for over a year now. That the applicant has clearly demonstrated his ownership of the said vehicle and its use which is tailored towards earning a living for him and his dependants as he privately hires it out at a fee. That the release of motor vehicles pending determination of the main suit is now widely recognized by Courts under the principles of avoiding undue hardship to the owners and further to preserve the value of such vehicles. That a typical African society, and specifically Kenya in this context, have been built on mutual trust over time and therefore not all engagements must be formal and reduced into writing. That besides, the law equally recognizes oral contracts and the fact that the applicant has adduced

relevant materials to prove that he is the registered owner of the subject motor vehicle, the prosecution's assertion that there is no hire agreement annexed to the application is without basis. That further, the statute under which the accused person has been charged does not in any way relate to forest produce as erroneously claimed by the prosecution in a bid to mislead this court as to the forfeiture of the vehicle, this being a clear manifestation that the deponent of the Replying Affidavit does not understand what is at stake. That in any case the accused person is still innocent until proven guilty and forfeiture is also not mandatory. That the applicant has proved that he is the owner of the subject vehicle and is willing to undertake to produce the same when required. Learned counsel referred the court to the decision in ***Republic vs John Nganga Mbugua (2014) e KLR.***

In the case of ***Republic vs John Nganga Mbugua, supra***, the High Court held that the fact that the vehicle was yet to be produced before the court does not bar the trial court from dealing with issues of exhibits still in the hands of the investigator provided that the State confirms that the item in question will be produced as an exhibit. In this case the State confirmed in the Replying Affidavit, particularly at paragraph 10, that the vehicle herein forms a crucial part of the physical exhibits linking the accused person to the offence herein.

The accused is not claiming ownership. The applicant has produced the log book which confirms him as the owner of the vehicle herein. This information was not disputed by the prosecution. In the circumstances, the ownership of the vehicle cannot be said to be contested. It is the practice in criminal cases that photographs will be taken by the scene of crime personnel of exhibits and scenes of crime which will be produced in evidence during the hearing. If it is possible to avail the exhibit itself, the photographs may also be produced. If the vehicle is released after its photographs are taken, no miscarriage of justice will be occasioned during the trial. It is not the duty of the complainant to take photographs of his vehicle and submit them to the police. Instead, it is the duty of the investigating officer to have exhibits photographed and ensure the photographs are processed in the manner authorized by the relevant regulations.

It does not make any sense to keep the vehicle of the applicant which is an income generating asset in custody until the pending criminal case is finalized. The prosecution have not attempted to demonstrate to this court why the vehicle should continue to be detained at the KWS station while the applicant is ready and willing to produce it during hearings.

I find this application merited and I allow it on the following terms: -

- a. That the respondent in conjunction with the in charge KWS Nakuru Station do release the applicant's vehicle registration no. KDA 704Q to the applicant within three (3) days from the date of this ruling;
- b. That the respondent arranges for prompt photographing of the vehicle within the three (3) days;
- c. That the applicant gives a written undertaking to the respondent that he will produce the vehicle during hearings or as directed by the trial court;
- d. That the original log book be held by the respondent or the investigating officer pending disposal of the case;
- e. That there is no order as to costs.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

Ruling dated and delivered on the ...**15th**.....day of ...**January**...., **2026** in the presence ofMacharia.....for the State.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE