

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
MISCELLANEOUS CRIMINAL APPLICATION NO. E211 OF 2025

KENYA WOMEN FINANCE BANK LIMITED..... APPLICANT
VERSUS
DANIEL NJOROGE MBURU.....1ST RESPONDENT
JANE WANJIKU WAWERU.....2ND RESPONDENT

R U L I N G

The Application

1. By a notice of motion dated 17th September 2025 the applicant seeks orders that:
 - 1) Spent;
 - 2) Spent;
 - 3) This honourable court be pleased to revise and/or set aside the orders of the court issued in Embu MCCR No. E891 of 2024 on 1st July 2025 and all subsequent related orders issued pursuant to and for the purpose of enforcing the orders issued on 1st July 2025;
 - 4) This honourable court be pleased to issue any other orders that it may deem just and fit; and
 - 5) The costs of this application, be provided for.
2. The application is supported by the grounds set out on its face and in the supporting affidavit thereof.
3. The applicant deposed that it is the registered owner of motor vehicle registration number KCN 925C which had been provided as collateral for a loan secured by the 2nd respondent. Consequently, the vehicle was registered in the joint names of the applicant and the 2nd respondent. Unbeknownst to the applicant, the said motor vehicle became the subject of the suit in Embu MCCR No. E891 of 2024 and Embu MCCR No. E903 of 2024 which suits were consolidated.
4. At the time, the 2nd respondent had defaulted in repaying the loan for which the motor vehicle was held as collateral. The applicant issued a proclamation notice and the motor vehicle was impounded by Timeline Dolphine Auctioneers. Through Embu MCCR No. E891 of 2024, the 2nd respondent prayed that the motor vehicle be surrendered to the OCS Embu Police Station and the court allowed this prayer. It stated that the orders by the trial court are prejudicial to it and they violate its rights

under Article 50(1) and (2) of the Constitution and section 9(1)(a) and 9(2) of the Victim Protection Act.

5. The applicant is now seeking the order herein being apprehensive that if the vehicle is surrendered to the OCS Embu Police Station, it might be subjected to depreciation and vandalism and its security is not assured.

Replying Affidavit

6. The 2nd respondent filed a replying affidavit in which she termed the application as an abuse of the court process, and that the trial court gave its orders after considering the material presented before it. She stated that the applicant was not a party before the trial court neither did it make an application to be enjoined in that suit. Therefore, the applicant should be bound by the orders of the court until the case is concluded.
7. She also deposed that the orders were made in the interest of justice and they are, in no way prejudicial to the applicant. That, in any event, the ownership documents of the vehicle are to be availed to court on all mentions of the matter and it was also ordered that the vehicle should not be sold or otherwise disposed of during the pendency of the case. It was her case that the applicant was not denied a chance to be heard because it was not a party to the criminal proceedings.
8. That even though the motor vehicle was proclaimed following a defaulted loan, the same vehicle was the subject of ongoing criminal proceedings and no pending civil proceedings were ongoing. She deposed that the applicant has not demonstrated any exceptional circumstances, impropriety or illegality to warrant revision of the impugned order under section 362 of the Criminal Procedure Code.

Parties' Submissions

9. The court directed that the application be canvassed by way of written submissions.
10. The applicant stated in its submissions that it holds the original logbook for the motor vehicle with it since the vehicle is being held as security for a loan that has since been defaulted by the 2nd respondent. It stated that it is interested in recovering the defaulted loan amount through sale of the motor vehicle at an auction and that is why it had proclaimed the vehicle. That if the order of the court is implemented, it will suffer prejudice and loss. It relied on the case of **Kasturi Limited v Nyeri Wholesalers Limited [2014] KEELC 622 (KLR)** and argued that a matter is only settled once all the parties have been heard.
11. The 2nd respondent filed written submissions in which she relied on the case of **Republic v James Kiarie Mutungei [2017] KEHC 7170 (KLR)** and argued that section 362 of the Criminal Procedure Code cannot be used as an avenue for

appeal for matters of a civil nature. Rather, it gives special jurisdiction for revision of orders in a criminal case and so the interests of a civil nature of an aggrieved third party cannot be addressed herein. She submitted that no impropriety can be seen in the impugned orders of the trial court.

12. She also relied on the cases of **Joseph Lendrix Waswa v Republic [2019] KECA 752 (KLR)** and **Thomas Patrick Gilbert Cholmondely v Republic (2008) eKLR** and argued that third parties should not interfere with a case unless they are allowed to do so under statute. She also argued that the applicant is not a victim within the meaning provided under section 9(1)(a) and 9(2) of the Victim Protection Act.
13. She relied on the meaning of 'victim' under section 2 of the Victim Protection Act and the cases of **Odhiambo v Attorney General & 2 others; Nyanhoga (Interested Party) [2024] KEHC 354 (KLR)** and **Republic v Barno & 5 others; Sayan Investments Limited (Victim) (Criminal Appeal E322 of 2024) [2025] KEHC 8652 (KLR)**. Further reliance was placed on the cases **Republic v Chief Magistrate Milimani & another Ex-parte Tusker mattresses Ltd & 3 others [2013] KEHC 6807 (KLR)**, **Republic v Hassan [2023] KEHC 25878 (KLR)** and **Kuria & 3 others v Attorney General [2002] KEHC 1215 (KLR)**.
14. She stated that the court should guard against litigants seeking criminal recourse in civil courts and *vice versa*. She reiterated that the applicant is concealing its civil issue within a criminal matter and urged the court not to entertain the application.

Issue for Determination

15. The issue for determination is whether the orders of the trial court should be set aside.

Analysis and Determination

16. The Supervisory power of the High Court is drawn from Article 165(6)&(7) of the Constitution which provides:

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

17. Section 362 of the Criminal Procedure Code provides as follows on how the High Court's may exercise its supervisory jurisdiction in carrying out revision in criminal cases:

"The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court." [Emphasis added]

18. Revision in criminal cases is provided for under the Criminal Procedure Code as one of the ways in which the High Court can exercise its supervisory jurisdiction. This is different from an appeal to the High Court exercising its appellate jurisdiction. Revision is also unique as it is only available in respect of criminal proceedings. It cannot apply in respect of a civil matter or cause arising within a criminal case, if at all.

19. The impugned orders of the lower court upon which it is sought that this court must exercise its revisionary power are as follows:

1. *THAT the prosecution is granted 14 days to conclude their investigations.*
2. *THAT the applicant shall deposit all necessary documents in respect of ownership of motor vehicle KCN 925C and car hire purposes to the investigating officer.*
3. *THAT the motor vehicle KCN 925C shall be released to the registered owner upon compliance with (ii) above.*
4. *THAT upon release of the said motor vehicle, the same shall be availed in court in every mention of this matter.*
5. *THAT the motor vehicle shall not be sold or otherwise disposed of until final determination of this case.*

20. In this case, the applicant was not a party to the criminal proceedings against the respondent. The criminal cases against the respondents were consolidated and prosecuted by the ODPP who is not a party in the present application having been discharged by this Court. It is clear that the issue between the applicant and the respondent is one of a civil nature, and it is in respect of recovery of a defaulted loan. The applicant claims that it proclaimed the subject motor vehicle in the criminal case at a time when the motor vehicle had been released to the 2nd respondent through criminal proceedings.

21. The applicant is aggrieved with this order to release the motor vehicle to the 2nd respondent as it would deny the bank a chance to recoup its value for the defaulted

loan through selling the motor vehicle. The applicant has argued that on this basis, it is a victim under the Victim Protection Act, whose interest is in the motor vehicle that is the subject of a criminal case.

Conclusions and Disposition

22. The only question that truly arises is whether the orders of the trial court are correct, legal, regular and whether they are imbued with propriety. That is what Section 362 CPC allows the Court to check and deal with. The nature of the charge faced by the respondents is that of handling a suspected stolen motor vehicle contrary to section 323 of the Penal Code. The trial court gave the impugned orders after considering the evidence before it and the circumstances of the criminal case. There is nothing to suggest that those orders are not correct, legal, regular or imbued with propriety.
23. In as much as the applicant has a legitimate interest in the named motor vehicle, its application fails on several grounds: first, that its claim against the respondent lies within the realm of a civil matter which cannot be canvassed within a criminal trial. Secondly, the trial court's order that the named motor vehicle be preserved from disposal until the criminal case is determined, is legal, given the nature of the criminal charges.
24. Finally, it should be noted that the applicant's claim that it is a victim in this case is entirely unfounded. There is no reason why its grievance cannot be addressed before a civil court once the criminal proceedings are complete. At the right time, it will be possible to ascertain ownership of the motor vehicle and the issues of loan default as well as proclamation, if necessary, within the civil processes under law.
25. In light of the foregoing, the application lacks merit and is hereby dismissed in its entirety.
26. Orders accordingly.

Delivered, dated and signed at Embu High Court this 22nd day of April, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Chege for 2nd Respondent Jane Wanjiku
2. Kathigi holding brief for Magee for Applicant

3. Stella Kithinji - Court Assistant