

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL REVISION NO. E026 OF 2025

MBUGUA NJOROGEAPPLICANT
VERSUS
PUBLIC PROSECUTIONSRESPONDENT

RULING

1. Vide an Amended Notice of Motion dated 5th May, 2025, brought pursuant to leave granted on 30th April, 2025, and expressed under Articles 24, 27 (1), 47 (1), 50 (1), 165 (3) (d) (ii) & (6) of the Constitution of Kenya, 2010, sections 362, 364 (1) (b), 367, and 382 of the Criminal Procedure Code (CAP 75), the Applicant seeks the following orders;-

1) That this Honourable Court be pleased to call for and examine the record in Nakuru Chief Magistrate's Court, Miscellaneous Criminal Case No. E578 of 2024 (Mbugua Njoroje v Republic), review the correctness and legality of the order passed vide the ruling delivered on 27th January, 2025 and substitute it with an order allowing the application dated 2nd September, 2024.

2) That there be no orders as to costs.

2. The Applicant states that the matter arises from the allegedly unlawful detention of motor vehicle registration number **KBS 359G**, which he purchased from one Enoch Kipchumba Limo on **31st March, 2023**. However, on **10th November 2023**, the Directorate of Criminal Investigations (DCI) in Nakuru detained the vehicle at Nakuru Police Station based on allegations that it belonged to Sleek Trading Limited.

3. Despite the Applicant recording a statement to prove his lawful ownership, the vehicle remained in custody for over ten months without any criminal charges being preferred against him or the seller.

4. Due to this lengthy detention, the Applicant, on **2nd September 2024**, filed a Miscellaneous Criminal Application (No. E578 of 2024) in the Nakuru Chief Magistrate's Court under Section 121 (3) of the Criminal Procedure Code, seeking the release of the vehicle. He argued that the arbitrary detention deprived him of his livelihood and property rights. During these proceedings, the Applicant undertook to produce the vehicle in court if charges were eventually preferred against Enoch Kipchumba Limo.
5. It is his case, that on **27th January, 2025**, Honourable Ruth Kefa Chebesio (PM) delivered a ruling dismissing the application. The Magistrate found that the prayers sought were in the nature of "**judicial review orders**" and that the Applicant was seeking redress for the infringement of proprietary rights rather than a criminal procedure remedy.
6. The Applicant now moves the High Court for revision, asserting that the Magistrate's decision was a misdirection in law and fact. He contends that the trial court failed to recognise that its jurisdiction under **Section 121 (3) of the Criminal Procedure Code** had been properly invoked to seek directions for property seized where no trial had commenced.
7. He further argues that the Magistrate flouted **Section 6 of the Magistrates' Court Act** by failing to consider the material evidence and the specific nature of the application. The Applicant maintains that unless the High Court intervenes to interrogate this erroneous decision, he will continue to suffer irreparable prejudice and hardship as his vehicle continues to waste away at the police station.
8. The Respondent has opposed this application vide their Replying Affidavit sworn on 9th June, 2025, by James Kihara, Prosecution counsel. He acknowledges that the Applicant is aggrieved by a ruling rendered in Nakuru Miscellaneous Criminal Application E578 of 2024, which originated from a Notice of Motion filed in September 2024.

9. He explains that the initial application was made by PC Mercy Wambete of DCI Nakuru East following a complaint by Sleek Trading Limited, the Mombasa-based owners of the motor vehicle registration KBS 359G. The vehicle had been sold on hire purchase to Enoch Kipchumba Limo for Kshs. 620,000, but the buyer defaulted after paying only Kshs. 300,000. Limo subsequently disappeared and cut off communication until the vehicle was eventually traced to the Applicant's possession in Nakuru by an auctioneer.
10. He stated that when the Applicant was questioned about ownership, he produced an NTSA logbook (No. N59883851) that conflicted with Sleek Trading Limited's logbook (No. N5455681Y), and the company confirmed they never authorised a transfer to either Limo or the Applicant. Consequently, both the Applicant and Sleek Trading Limited are currently claiming ownership of the vehicle.
11. The state counsel stated that the DCI Nakuru East has taken custody of the vehicle as an exhibit while investigations continue under OB 5/10/11/2023. He elaborates that these investigations specifically involve the NTSA to determine how a transfer was initiated without the authority or record of surrender from the original owners.
12. The Deponent asserts that Enoch Kipchumba Limo, while defaulting on payments, illegally transferred ownership to the Applicant, who was a mere possessor and cannot legally claim ownership. He states that Limo remains at large and is a subject of investigation for fraud, obtaining registration by false pretence, and cybercrime. He adds that there is a strong concern that the vehicle must revert to Sleek Trading Limited, as the Applicant lacks any colour of right to the property.
13. The Respondent argues that the detention is not arbitrary and that the Applicant failed to address the core issue of ownership in his application. Therefore, releasing the vehicle to the Applicant would be highly prejudicial

to the complainant and would risk the disappearance of a vital exhibit, thereby defeating the cause of justice. Furthermore, Sleek Trading Limited intends to recover the vehicle due to Limo's loan default and his subsequent dishonest disposal of the asset, which is described as tantamount to stealing.

14. Regarding the previous legal proceedings, the Respondent maintains that the Principal Magistrate's ruling was sound, regular, and should not be disturbed. He states that vacating the ruling would prejudice the complainant and overlook the principle that those seeking equity must do so with clean hands, suggesting the Applicant may have been part of a conspiracy or at least duped.

15. The Respondent insists the vehicle must remain with the DCI until the NTSA completes its inquiry into the illegitimate transfer process. Moreover, the Respondent points out a procedural flaw in the Applicant's case for failing to include the NTSA as a necessary respondent.

16. Finally, the affiant reiterates that the Magistrate's orders were neither improper nor erroneous in law or fact and urges the court to dismiss the application.

Applicant's Submissions

17. The Applicant identifies the main issue for determination as whether the Court should exercise its revisionary jurisdiction to call for and examine the record of the trial court to satisfy itself as to the correctness, legality, or propriety of the finding and order delivered on 27th January, 2025.

18. The Applicant submits that the High Court is empowered by **Section 362 of the Criminal Procedure Code** to call for and examine the record of any inferior criminal court to satisfy itself as to the correctness, legality, or propriety of any finding, sentence, or order. To support this, the Applicant cites the case of *Jaswant Singh Rai & 5 others v Republic [2013] eKLR*, where Mutende J held that revisionary jurisdiction is a supervisory power intended to correct errors of law or fact to prevent a miscarriage of justice.

19. Regarding the merits of the application, the Applicant argues that the trial Magistrate misdirected herself by treating the application as a Judicial Review matter rather than a criminal application for the release of property. He relies on the decision by Kavedza J in ***Bhavin Motors Limited v Republic, Mungai & 3 others [2024] KEHC 9120 (KLR)***, asserting that the police cannot hold property indefinitely without preferring charges, as the right to property under Article 40 of the Constitution remains paramount when the owner is not an accused person.
20. He argues that this position is further supported by Githua J in ***Kiplagat v Republic [2022] KEHC 16708 (KLR)***, where it was held that a magistrate erred by prioritising a third party's unproven interest over a registered owner's constitutional rights.
21. The Applicant further contends that income-generating assets, such as the subject vehicle, should not be left to waste away in police custody. He cites ***Republic v John Nganga Mbugua [2014] eKLR*** to advocate for the practice of using photographic evidence for exhibits so that the physical property can be released.
22. While acknowledging conflicting authorities like ***Republic v Everlyne Wamuyu Nguno [2016] eKLR*** and ***Republic v Cape Van International Ltd & another [2004] eKLR***, which suggested magistrates lack jurisdiction to release property not yet produced as exhibits, the Applicant urges the Court to adopt the more modern view that such jurisdiction is inherent under Section 177(a) of the Criminal Procedure Code.
23. Finally, the Applicant relies on the decision in ***Muigai Mucheru v Kenya Forest Service & another [2012] eKLR*** by Gitari J, to argue that a court can issue orders regarding property taken from an individual at any time.
24. He concludes by urging this Court to find the trial court's ruling erroneous and substitutes it with an order for the immediate release of the vehicle to him.

Respondent's Submissions

25. The Respondent identifies the main issue for determination as whether the order of the trial court dismissing the Applicant's application for the release of the motor vehicle was legal and whether the High Court should exercise its revisionary jurisdiction to interfere with that decision.
26. The Respondent acknowledges the High Court's jurisdiction under **Sections 362 and 364 of the Criminal Procedure Code (CPC)**. Relying on the holding by Mutende J in *Rai and 5 others v Republic, Criminal Revision E026 of 2024 [2024] KEHC 11363*, the Respondent notes that revisional jurisdiction allows the court to re-examine trial records, specifically where jurisdiction was exercised illegally or with material irregularity.
27. To define the limits of this power, the Respondent cites *Republic v James Kiarie Mutungei (2017) eKLR*, asserting that interference is only justified if the impugned decision is grossly erroneous. The Respondent argues for the continued enforcement of the order against the vehicle's release, citing Section 177(a) of the CPC, which allows a court to restore property to the person who appears entitled thereto.
28. The Respondent contends that the rightful owner is Sleek Trading Limited, as the alleged seller, Enoch Kipchumba Limo, defaulted on his hire-purchase agreement. Citing Section 2 of the Hire Purchase Act, Section 15 on the right of owners on breach, and Section 27 on the sale by persons not the owner, together with the case of *David Karobia Kiiru v Lverage Company Ltd [2017] eKLR*, the Respondent submits that because Limo breached the agreement, he could not pass a valid title to the Applicant. He adds that under the Sale of Goods Act, a buyer from a non-owner acquires no better title than the seller had.
29. The Respondent emphasises that the vehicle must remain in custody as an exhibit to prevent its disappearance and the potential for it to be used to swindle more unsuspecting persons via fraudulent logbooks. They cite

Section 118 of the Criminal Procedure Code, which provides for the safe custody of property likely to be endangered or made unavailable.

30. Lastly, the Respondent relies on the case of ***Republic v Aroko [2025] KEHC 6422 (KLR)*** to argue that the court must strike a fair balance between individual rights and the public interest in effective justice. He submits that premature release would undermine justice and prays that the court maintain the detention Order under Section 121 of the CPC until investigations are finalised.

Analysis and Determination

31. Upon careful consideration of the Application before this court, together with the Affidavit both in support and opposition of the Application, together with the rival submissions, the main issues for determination are:

- 1) Whether the Chief Magistrate’s Court erred in declining jurisdiction to order the release of motor vehicle KBS 359G.***
- 2) Whether the High Court should, on revision, set aside that decision and grant appropriate orders.***

32. Section 362 of the CPC provides for the powers of the High Court to call for subordinate Court records. To be specific, the Section states:-

“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.”

33. On the other hand, Section 364 of the CPC provides for powers of the High Court on revision, as follows:-

***“ (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
(a) in the case of a conviction, exercise any of the powers conferred***

on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence; (b) in the case of any other order other than an order of acquittal, alter or reverse the order. (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned. (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence. (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction. (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

34. Generally, Sections 362 and 364 of the Criminal Procedure Code, quoted above, as read with Article 165(6) of the Constitution, grant the High Court supervisory powers over the subordinate Court. For, Emphasis, Article 165(6) of the Constitution provides as follows; -

“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.”

35. Supervisory and revisionary powers of the High Court empower it to effectively supervise subordinate courts to correct their errors or wrongs and or ascertain itself on the correctness, legality and propriety of the lower

court record as emphasised under Section 362 of the Criminal Procedure Code.

36. Upon consideration of the matter, the primary issue that arises is whether the learned magistrate erred in law in declining jurisdiction to entertain the application for release of the motor vehicle. Closely intertwined with this is the question of the legal status of the motor vehicle, particularly whether it constitutes an exhibit in the pending criminal proceedings or whether it is merely property held in custody, and consequently, whether it is amenable to release. Ultimately, the Court must determine whether the circumstances warrant the intervention of this Court by way of revision.

37. Section 121 of the Criminal Procedure Code provides;-

“(1) When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.(2) If an appeal is made, or if a person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.(3) If no appeal is made, or if no person is committed for trial, the court shall direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorised or required by law to dispose of it otherwise.”

38. In this matter, the subject motor vehicle was impounded following allegations that Enoch Kipchumba Limo defaulted on the hire-purchase agreement with Sleek Trading Limited. Given that Sleek Trading Limited claims to hold the original logbook (No. N5455681Y), a significant dispute arose regarding the legitimacy of the vehicle's registration in the Applicant's name.

39. The Respondent maintains that the vehicle must remain in police custody as a crucial exhibit while investigations continue into how ownership was transferred without the authority of the original owners.

40. According to the Affidavit of Police Constable Mercy Wambete sworn before the trial court on 10th September, 2024 and filed on 29th October, 2024, she stated that the ongoing inquiry involves serious allegations, including making a false document contrary to Section 347 of the Penal Code, obtaining registration by false pretences contrary to Section 320 of the Penal Code, and unauthorized access contrary to Section 14 of the Computer Misuse and Cybercrime Act. These are offences that fall squarely within the Magistrates' Courts' trial jurisdiction.
41. In light of that, this Court finds that the issue of detaining a vehicle pending investigation into such criminal charges is a matter that falls within the statutory mandate of the subordinate court. Consequently, the learned Magistrate, Hon. Ruth Kefa Chebesio, erred in law and fact by declining jurisdiction and characterising the application as one seeking judicial review or proprietary redress rather than a criminal procedure remedy.
42. On whether this Court, in the exercise of its revisionary jurisdiction, should order the release of the subject motor vehicle, the record indicates that investigations into proposed criminal charges against Enoch Kipchumba Limo commenced in November 2023, following reports lodged at Nakuru Central Police Station (OB No. 22/10/11/2023) and Mombasa Central Police Station (OB No. 74/14/11/2023).
43. Despite the lapse of approximately two(2) years and four(4) months, no charges have been preferred against Mr. Limo, nor has any criminal proceeding been instituted. Furthermore, the Respondent has provided no substantive update regarding the progress of these protracted investigations.
44. Under Section 121(3) of the Criminal Procedure Code, where property has been seized but no person has been committed for trial, the court is empowered to order the delivery of such property to the person entitled to possession. This statutory provision serves as a safeguard against the indefinite and arbitrary detention of property.

45. In the present case, the matter is complicated by a concurrent civil dispute arising from a hire-purchase agreement between Sleek Trading Limited and Mr. Limo. The Applicant asserts his rights as a bona fide purchaser for value, while Sleek Trading Limited claims an interest grounded in the alleged breach of the hire-purchase arrangement. It is a well-settled principle that the criminal process must not be utilised as a tool for the resolution of purely civil or proprietary disputes. Where ownership is contested, a criminal court should refrain from making final determinations on title and should instead adopt measures to preserve the substratum of the dispute.
46. Furthermore, while the vehicle may be required as an exhibit, its continued detention must be balanced against the Applicant's proprietary rights under Article 40 of the Constitution. The Court must strike a delicate balance between the Applicant's possessory interests, the complainant's rights under the hire-purchase agreement, and the overarching public interest in the effective administration of criminal justice.
47. Consequently, this Court is satisfied that the threshold for the exercise of its revisionary jurisdiction has been met. The trial court's decision to decline jurisdiction was a misdirection in law that cannot be sustained. To this extent, the application for revision is merited.
48. Regarding the substantive prayer for release, the Court finds that the investigative period since November 2023 has become unreasonably prolonged. While this Court is reluctant to interfere with the constitutional mandate of the police to investigate crime, the indefinite detention of the vehicle is deeply prejudicial to the Applicant, who continues to suffer economic loss.
49. As the current registered owner, the Applicant is presumed to have legitimate title unless and until evidence to the contrary is produced in a court of law, evidence which, to date, remains buried in ongoing investigations.

50. In the circumstances, the Directorate of Criminal Investigations (DCI) is hereby directed to conclude its investigations within thirty (30) days from the date of this Ruling and to ensure the arraignment of the implicated parties before a court of competent jurisdiction.

51. In the event of noncompliance with this directive, the DCI shall immediately cause the subject motor vehicle to be photographed and released to the Applicant.

Dated, signed and delivered at Nakuru this 21st Day of April, 2026.

**PATRICIA GICHOHI
JUDGE**

In the presence of:

Mr Githui for the Applicant

Ms Mwaura for Respondent

Erickson- Court Assistant