

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL APPEAL NO. 057 OF 2025

TRICOMP LIMITED.....
APPELLANT

AND

TARUA SCRAP METAL DEALERS.....1ST
RESPONDENT

ODPP MAVOKO.....2ND
RESPONDENT

OCS MLOLONGO3RD
RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 23rd May 2025 in which the Applicant seeks the following orders:
 - a. That this Honourable Court be pleased to stay execution of the orders of the Learned Hon. M. Nanzushi, Principal Magistrate, given at Mavoko on the 14th July 2025 at the Magistrates' Court at Mavoko in Miscellaneous Criminal Case No. E148 of 2025, directing that spare parts be released to the 1st

Respondent, Tarua Scrap Metal Dealers, pending the hearing and determination of an appeal against the said ruling.

- b. Spent
 - c. That this Honourable Court be pleased to issue an injunction restraining the 1st Respondent, namely, Tarua Scrap Metal Dealers, from selling or disposing of the spare parts forming the subject matter of Misc. Criminal Case No. E148 of 2025 and the intended appeal, in the event that the spare parts have already been released to the 1st Respondent.
 - d. Any other orders that this Honourable Court may deem fit to grant in the circumstances.
2. The application is brought pursuant to Section 356(1) of the Criminal Procedure Code and is supported by an affidavit sworn on 16th July 2025 by James Sewe Ofwona, a director of the Applicant
 3. The Applicant depones that it imported two mixer trucks and a concrete pump for use in its business. The equipment later broke down while in Juba, South Sudan, and was transferred to Kenya for purposes of overhaul prior to being returned.
 4. While the equipment was parked at Kiang'ombe, Embakasi, the Applicant avers that it was stolen. A report was subsequently made to Mlolongo Police Station, prompting investigations.

5. According to the Applicant, police investigations led to the recovery of parts of the stolen equipment from a yard in Mlolongo, operated by the 1st Respondent, Tarua Scrap Metal Dealers. The Applicant states that investigations are ongoing and that suspects are still being pursued by the police.
6. The Applicant further depones that the 1st Respondent filed Mavoko Misc. Criminal Case No. E148 of 2025, seeking the release of the mixer and concrete pump spare parts that had been impounded and taken to Mlolongo Police Station as exhibits. After hearing the parties, the subordinate court, in a ruling dated 14th July 2025, ordered the release of the spare parts to the 1st Respondent.
7. The Applicant contends that the order for release was issued notwithstanding that the issue of ownership of the spare parts was not controverted, and that the 1st Respondent did not meaningfully participate in the proceedings beyond filing the miscellaneous application.
8. Aggrieved by the said ruling, the Applicant avers that it has lodged an appeal, which raises weighty and arguable grounds with high chances of success. It is its position that unless a stay and preservatory orders are granted, the appeal will be rendered nugatory and the Applicant will suffer irreparable loss.
9. The Applicant maintains that the application was filed promptly, is made in good faith, and that no prejudice will

be occasioned to the Respondent if the orders sought are granted.

10. The 1st Respondent opposed the application through a Replying Affidavit sworn on 12th August 2025 by Stephen Nanyoo Nzuve. It is contended that the application is devoid of merit, lacks legal basis, and constitutes an abuse of the Court process. The 1st Respondent depones that the Applicant has failed to establish any nexus between the alleged theft and the 1st Respondent's business, as required by law and judicial precedent.

11. It stated that on 16th August 2022, the 1st Respondent purchased thirty-five (35) pieces of assorted motor vehicle spare parts, each weighing approximately 640 kilograms, valued at Kshs.2,480,544/=, from Angem Investments, located on Likoni Road, Nairobi. Further that on 23rd August 2022, officers from Mlolongo Police Station impounded the said spare parts, alleging that they were stolen property, and removed them to the police station as exhibits.

12. It is the 1st Respondent's case that more than three years have elapsed since the parts were confiscated, and yet no criminal charges have been preferred against it. It contends that the continued detention of its property is unlawful and violates its constitutional right to property. It therefore urges the Court to dismiss the application and

allow the execution of the subordinate court's orders without further delay

13. The 2nd and 3rd Respondents elected not to participate in the proceedings relating to this application, stating that in their view, the dispute is civil in nature as there is no pending criminal trial before the Court.
14. The application be canvassed by way of written submissions. As at the time of preparing this ruling, the 1st Respondent's submissions were not on record.
15. In its submission, the Applicant reiterates that the mixer trucks and concrete pump were stolen while in Kenya, and that components thereof were traced to the 1st Respondent's yard. The Applicant emphasizes that the parts were seized as exhibits and that investigations are ongoing.
16. The Applicant submits that Section 356(1) of the Criminal Procedure Code vests this Court with jurisdiction to issue preservatory relief pending appeal. Reliance is placed on, inter alia, **Republic v Abraham Lagat [2017] eKLR**, **Simon Okoth Odhiambo v R [2005] eKLR**, and **Director of Public Prosecutions v Ibrahim Asala Mahangwa & 2 Others [2022] KEHC 928 (Meru)** for the proposition that exhibits should not be released prematurely where doing so may defeat pending investigations or appeals.
17. It is further argued that the appeal is arguable and that without a stay, it will be rendered nugatory, with

adverse implications on the public interest and the administration of justice. The Applicant contends that the 1st Respondent cannot invoke Article 40 of the Constitution as a shield, as Article 40(6) expressly excludes protection for property that is reasonably suspected to have been unlawfully acquired. The Applicant urges that preserving the spare parts pending appeal and investigations is the only course consistent with justice.

18. The Applicant maintains that the Respondent will suffer no prejudice if the orders sought are granted and reiterates that the application was brought in good faith to prevent the appeal from being rendered an academic exercise.

19. I have carefully considered the application, the supporting and replying affidavit, the written submissions on record, and the applicable law. The application invites this Court to exercise its discretionary jurisdiction to grant stay of execution and preservatory relief pending the hearing and determination of an appeal arising from Mavoko Misc. Criminal Case No. E148 of 2025.

20. The grounds for exercising the discretion to grant an order for stay are settled. At this interlocutory stage, the Court is not to determine the merits of the appeal. It suffices for the Applicant to demonstrate that the intended appeal is arguable, that is, that it raises bona fide issues deserving judicial consideration and is not frivolous.

21. From the record, the Applicant challenges the ruling of the subordinate court which ordered the release of spare parts that had been impounded as exhibits in the course of police investigations into alleged theft.
22. The Applicant contends, inter alia, that, the ownership of the parts remains contested, investigations are ongoing, the 1st Respondent did not controvert the Applicant's claim of ownership, and premature release of the parts compromises both investigations and the appeal.
23. These grounds raise serious questions regarding the proper treatment of suspected exhibits, the protection of property pending criminal investigations, and the limits of a miscellaneous criminal application where ownership and criminal culpability remain unresolved. I am therefore satisfied that the appeal meets the threshold of arguability.
24. As to whether the appeal would be rendered nugatory, the court notes that in the present case, the Applicant seeks to restrain the release, sale, or disposal of spare parts alleged to form part of stolen machinery. The 1st Respondent is a scrap metal dealer. Once such parts are released, they are likely to be dismantled, melted down, or sold to third parties. Recovery would, be impossible.
25. If that were to occur before the appeal is heard and determined, even a successful appeal would be reduced to an academic exercise. The subject matter of the dispute would have ceased to exist in its original form, thereby

causing prejudicing to the Applicant. I am therefore persuaded that, without a stay and preservatory orders, the intended appeal stands a real risk of being rendered nugatory.

26. On the balancing of rights; The 1st Respondent has invoked Article 40 of the Constitution, asserting violation of its right to property following prolonged seizure of the spare parts without prosecution. While the right to property is constitutionally protected, Article 40(6) expressly excludes protection for property that is found to have been unlawfully acquired or is reasonably suspected to be so acquired. At this stage, the Court is not determining guilt or ownership conclusively. However, it is undisputed that the spare parts were seized as suspected exhibits in relation to alleged theft. Thus, I must caution against the premature release of exhibits where investigations or appellate processes are pending, as such release undermines the criminal justice system and risks shielding proceeds of crime under the guise of property rights. The 1st Respondent has also argued that it has suffered prolonged deprivation of property. While that allegation is not trivial, it must be weighed against the fact that criminal investigations are ongoing and no final pronouncement has been made on ownership and appropriate relief, including compensation, remains available should the Respondent ultimately succeed.

27. In light of the foregoing analysis, I find that the Applicant has demonstrated an arguable appeal; the refusal to grant stay would render the appeal nugatory and that the balance of convenience favours preservation of the spare parts pending appeal. I therefore proceed to allow the application and makes the following orders:

- a) Stay of execution is hereby granted pending the hearing and determination of the appeal against the ruling delivered on 14th July 2025 in Mavoko Miscellaneous Criminal Case No. E148 of 2025. The order directing the release of the impugned spare parts to the 1st Respondent, Tarua Scrap Metal Dealers, is hereby suspended.
- b) The Officer Commanding Mlolongo Police Station shall continue to safeguard and preserve any of the impugned spare parts currently in police custody, and shall ensure strict compliance with these orders.
- c) The Applicant shall file and serve the Record of Appeal within forty-five (45) days from the date hereof. In default, the orders of stay and injunction shall lapse automatically unless extended by order of the Court.
- d) Costs of the application shall abide the outcome of the appeal.

Dated, signed and delivered at Machakos this 7th day of May, 2026

RHODA RUTTO
JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

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