



**Republic v Capital & 2 others (Criminal Revision E085 of 2024)
[2025] KEHC 815 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E085 OF 2024
DR KAVEDZA, J
JANUARY 30, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

SALEV CAPITAL 1ST RESPONDENT

REFUGEE TRAVEL LIMITED 2ND RESPONDENT

GERALD NDEMO RASUNGU 3RD RESPONDENT

RULING

1. The applicant filed the notice of motion dated 18th November 2024 seeking the revision of the orders of the trial court issued on 15th November 2024 releasing motor vehicle registration number KDD 835Q Toyota Prado. The application is supported by an affidavit sworn by the Ms. Kathurima learned Prosecution Counsel.
2. The averments made in support of the application are that: the 3rd respondent is facing charges of being in possession of narcotic drugs contrary to section 3(1) as read with 2(b) of the [Narcotic and Psychotropic Substances \(Control\) Act](#), No. 4 of 1994. The motor vehicle in issue is an exhibit. The trial court however ordered its release to the 3rd respondent without the prosecution being given a chance to be heard. The decision was bad in law, irregular and improper. The prosecution will be prejudiced if the order of release of the motor vehicle is enforced as the criminal case is yet to kick off.
3. In response, the 3rd respondent vide a replying affidavit contended that the motor vehicle is owned by the 1st respondent and Sidian Bank as the financier. The 2nd respondent is a car rental company and entered into a car hire agreement with one Richard Chesoni who is an accused before the trial court. Investigations have since been completed and the respondents' and their directors have not been accused or charged with any criminal offence. The respondents have never raised an objection to pictures of the motor vehicle being taken as exhibits by the prosecution. In addition, the application



for release of the motor vehicle was heard unopposed as the prosecution, absented itself from the day's proceedings.

4. The application was canvassed by way of written submissions which have been duly considered. The issue for determination is whether the orders of revision sought should be granted.
5. The power of this court in its revisionary jurisdiction is founded under Section 362 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.

Article 165(6) of the *Constitution* provides that:

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.

6. Consequently, this court has jurisdiction to entertain the application before me. In the instant application, the applicant sought a revision of the ruling delivered on 15th November 2024 releasing the motor vehicle in issue to its owner. In the premises, the key issue for consideration is the question of whether the proceedings of the lower court and the ruling can be faulted in terms of correctness, legality or propriety.
7. From the record, the trial court considered the application, the response thereto and the evidence on record. It is manifest from the foregoing that the learned magistrate reached his decision after giving due consideration to the respective positions taken by the parties before him. The applicant was therefore given opportunity to articulate its case before the ruling was delivered. In any case, if a party fails to appear in court, at the selected time, the court has no recourse but to proceed without them.
8. The applicant has attempted to challenge the application on the merits of the decision arrived at by the learned trial magistrate. For instance, the that the trial court erred by releasing the motor vehicle to its owner despite it being an exhibit in the criminal trial. My considered view however is that, when it comes to perceived errors in the appreciation of the facts of a particular case and the application of the law to those facts, the trial magistrate's decision can only be competently challenged on appeal.
9. The upshot is that I find nothing in the record of the subordinate court that shows there was an illegality, irregularity, or impropriety in the proceedings or the orders made by the court. In the result, therefore, I find the application for revision dated 18th November 2024 is completely devoid of merit. The same is hereby dismissed.

It is so ordered.

RULING DELIVERED VIRTUALLY IN THE ABSENCE OF THE PARTIES ON 30TH JANUARY 2025.

D. KAVEDZA

JUDGE

