



**Kirimi v Director of Public Prosecution (Criminal Miscellaneous Application
E043 of 2024) [2025] KEHC 4049 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL MISCELLANEOUS APPLICATION E043 OF 2024**

**HM NYAGA, J
MARCH 24, 2025**

BETWEEN

JAMES MUTWIRI KIRIMI APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

RULING

1. By an application dated 3rd June 2024, the Applicant has sought the following orders:-
 - a. Spent
 - b. That this Honourable Court be pleased to order the 1st Respondent to release motor cycle registration number KMFT 893 P make Dayun to the Applicant.
 - c. That the 1st Respondent be granted leeway to take photographs of motorcycle or further evidence to be used in any intended further proceedings and at Criminal case.
 - d. That the court do make any other orders, it may deem expedient in the interest of justice.
2. The application is supported by the affidavit of the Applicant sworn on even date.
3. In a nutshell, the Applicant states that he is the registered owner of the motor cycle registration number KMFT 893 P, used to ferry pillion passengers. That in the month of March 2024, he employed one Edwin Kimathi as a rider of the said motor cycle. That on 18.3.2024, he received a call from the said rider who informed him that his motorcycle had been confiscated by Police Officers from Muthara Police station. That on the following day he visited the said police station and confirmed that indeed, his motor cycle was detained there. That he was not informed why the same was detained, but the officers, told him that they were looking for Edwin Kimathi and asked for time to trace him before releasing the motorcycle.



4. The Applicant further states that he has visited the Police Station several times, seeking the release of his motorcycle without success. He avers that the motorcycle is his only source of livelihood and it is likely to go to waste mechanically if it stays idle for long. That there are no good grounds to continue holding the same. That he is ready to deposit the logbook or abide by any condition that the court may deem fit to grant if it releases the motorcycle to him. That he is ready to avail the motorcycle whenever required.
5. In response, the state filed a replying affidavit sworn by one No. 236813 chief Inspector Ronald Awori, stationed at DCI, Tigania East.
6. The officer deponed that on 19th March 2024, police officers on night patrol intercepted the motor cycle in question carrying two sacks of a substance suspected to be cannabis sativa. That the rider abandoned the motorcycle and fled into the darkness. That the motor cycle and the two sacks were taken to the police station and detained as exhibits. That a search at the NTSA confirmed that the Applicant was the registered owner of the said motorcycle. That samples of the substance were taken for analysis and the Government Chemist report confirmed the same to be cannabis sativa, a drug listed under the Narcotics Drug and Psychotropic substance Control Act. It is averred that the motor cycle was used in the commission of the offence and that investigations are ongoing, pending the arrest of the suspect(s).

Analysis and Determination

7. It is not in dispute that the motor cycle was intercepted while ferrying cannabis sativa a prohibited psychotropic substance.
8. Sections 75 and 77 of the *Narcotic Drugs and Psychotropic Substances (Control) Act* provides for the procedure to be followed upon seizure of any narcotic drugs and any vessel used in conveyance thereof. The said sections provides as follows:-
 75. Keeping of property seized under Act

All articles and things, including any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance seized by any person under this Act shall, as soon as possible, be delivered to the Commissioner of Police with a statement of the particulars relating to the seizure and the Commissioner of Police shall arrange for the articles and things to be kept safely until they are dealt with in accordance with any other provision of this Act, and shall ensure that all reasonable steps are taken to preserve the articles and things while they are so kept.
 77. Notice of seizure
 - (1) Where any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance or any other article or thing liable for forfeiture is seized under this Act, notice of the seizure shall be given by the person seizing the same as soon as possible to the owner or to the person in charge thereof if such person is not the owner.
 - (2) A notice under subsection (1) shall be given to the owner or person in charge— (a) by delivering the notice personally to the owner or person in charge, as the case may be, or by sending the notice by post to his usual place of abode or business premises; or (b) if the owner or person in charge, as the case may be, is not known or, if known, he cannot be found after reasonable enquiry and his usual place of abode and his business premises are not known, or he refuses to accept the notice when tendered to him, by publishing the notice in one newspaper circulating in Kenya.



- (3) Any person who claims any article or thing referred to in subsection (1) and seized under this Act, as its owner or any other person duly authorized by such owner may give notice to the Commissioner of Police that he claims the article or thing within thirty days of the date on which the notice of seizure under subsection (1) was delivered under subsection (2)(a) or, if the notice of seizure was not so delivered, of the date on which the owner came to know of the seizure: Provided that no notice of claim shall be entertained by the Commissioner of Police under this subsection after the expiry of ninety days from the date of the seizure.
- (4) Any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance or any other article or thing seized under this Act and in respect of which no notice of claim was given before the expiry of the time prescribed therefor shall be deemed to be taken and condemned and may be disposed of by the Minister in such manner as may be prescribed by regulations

9. As can be seen, there was need for a notice and statement of the seizure to the Inspector General of police, who was to arrange for the said items to be kept safely until then were dealt with under the Act. Thereafter, a notice of seizure ought to have issued to the owner of the vessel/article seized. Upon such notice, the owner ought to have given notice to the Inspector General that he claimed the article or item.
10. Clearly, none of the parties followed the procedure as set out. The applicant became aware of the seizure on 19th March 2024. Therefore, he had until 18th June 2024 to issue a notice of claim to the Inspector General. He did not do so, instead he came to this court on 3rd June 2024.
11. Should the Applicant suffer from the failure to adhere to the laid down procedure? In my opinion, that ought not to happen. The court has a duty to do substantive justice as enjoined by Article 159 of *the Constitution*. On this ground, the court will address the issue on its merits.
12. The Applicant claims that he had employed the said Edwin Kimathi to ferry passengers for a fee. He did not produce any documented to prove that indeed, the said Edwin Kimathi was his employee as required under section 74 *Employment Act*. It states as follows;

Records to be kept by employer

- (1) An employer shall keep a written record of all employees employed by him, with whom he has entered into a contract under this Act which shall contain the particulars— (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) of a policy statement under section 6(2) where applicable; specified in section 10(3); specified in section 13; specified in sections 21 and 22; of an employee’s weekly rest days specified in section 27; of an employee’s annual leave entitlement, days taken and days due specified in section 28; of maternity leave specified in section 29; of sick leave specified in section 30; where the employer provides housing, particulars of the accommodation provided and, where the wage rates are deconsolidated particulars of the house allowance paid to the employee; of food rations where applicable; specified in section 61; of a record of warning letters or other evidence of misconduct of an employee; and any other particulars required to be kept under any written law or as may be prescribed by the Minister.
13. Further, under section 110 and 111 of the *Traffic Act*, the Applicant has a duty to produce details of his driver/rider when required. The sections provide as follows :-

110.Owner or other person to furnish name and address of driver of vehicle The owner of any vehicle and any other person who is able to provide such information shall, as soon as reasonably possible and



in any case within seven days after having received a verbal or written request for such information, give such information as he may be required by a police officer to give as to the identity of the driver of such vehicle.

111. Owner to keep list of drivers employed

- (1) Any person who employs any other person to drive a motor vehicle shall keep a written record of the name, address and driving licence number of such other person. (2) Such record shall be preserved for a period of six months after the date when such person ceases to be employed as a driver, and shall be made available to any police officer on demand.
- (3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

14. Therefore, it Is not enough for the Applicant to just claim that he had employed Edwin Kimathi. He has a duty to provide all the requisite details of his employee/rider as required by the law.
15. It is evident that the Applicant has not been considered a suspect. He is the registered owner of the motor cycle in question. I think that justice demands that he does not suffer for an act as omission that is not of his own making.
16. Having considered the matter, I am inclined to grant the following orders/directions:-
 - a. The Applicant to provide full details and documentation of his employee/rider to the Investigating Officer.
 - b. The Applicant is to deposit the logbook of the motor cycle with the Investigation Team forthwith.
 - c. The above to be complied within 14 days from the date of this ruling.
 - d. Thereafter, the motorcycle shall be released to the Applicant and the Investigating Officer may choose to retain other form of evidence in respect to the said motorcycle.
 - e. The Applicant shall abide by every notice or summons issued to him by the Investigating Officer, failing which the motorcycle may be re-seized and detained.
 - f. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF MARCH 2025.

H.M. NYAGA

JUDGE

