



**Churqo v Director of Public Prosecutions & another (Criminal Revision
E056 of 2024) [2025] KEHC 11416 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E056 OF 2024
DR KAVEDZA, J
JULY 31, 2025**

BETWEEN

AHAMED MAHULO CHURQO APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

ANTI-NARCOTIC UNIT (DCI) 2ND RESPONDENT

RULING

1. The applicant brought a notice of motion dated 12th August 2024 seeking revision of the ruling delivered on 21 September 2023 in JKIA Criminal Case No. E015 of 2020 by the Chief Magistrate’s Court. He seeks the release of motor vehicle registration number [particulars withheld], a Toyota Wish.
2. The application is grounded on the supporting affidavit of the applicant, who avers that he is the lawful and registered owner of the subject vehicle. He leased it to one Hassan Abdikadir Juma, the fourth accused in the main case, on 11th September 2020 for use during the latter’s wedding, with an oral agreement that the vehicle would be returned on 25th September 2020.
3. The applicant states that on 20th September 2020, he was informed that the lessee had been arrested the previous day, and the vehicle had been impounded in connection with a drug trafficking investigation. He learnt that it was being held at Achas Police Post in Isiolo County, and that its release required a court order.
4. Subsequently, the applicant was contacted by an officer from the Assets Recovery Agency and served with pleadings indicating an intention to forfeit the vehicle to the state. He contends that the second respondents unlawfully detained the vehicle, yet he was neither involved in nor aware of any illegal activities. He asserts that the continued detention of the vehicle is causing him financial loss, as the vehicle is depreciating in value and could otherwise be earning him income.



5. The applicant maintains that photographic evidence would suffice for trial purposes and undertakes to produce the vehicle in court when required. He argues that failure to grant the orders would occasion him prejudice and injustice, while the respondents stand to suffer no prejudice if the vehicle is released.
6. The application was determined through written submissions, which the court has considered. The sole issue for determination is whether the orders issued by the trial court merit interference through revision.
7. The revisionary jurisdiction of this court is donated by Section 362 of the *Criminal Procedure Code* which provides that:

“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.”
8. From the above provision, it is clear that the court can only revise orders or decisions of the lower court if it is satisfied that the decision, order, or finding is tainted with illegality, errors of law, or impropriety or that there was an irregularity in the proceedings that gave rise to the impugned order, finding or decision.
9. The issue for determination is whether the motor vehicle should be released to the applicant.
10. From the record, it is not disputed that the applicant is the registered owner of motor vehicle registration number [particulars withheld]. The vehicle was leased to the fourth accused in the primary criminal proceedings, who was later arrested in connection with drug trafficking. The vehicle was subsequently seized and has remained in police custody.
11. The applicant asserts that the continued detention of the vehicle is causing him financial harm, as the vehicle is depreciating and is no longer generating income. This concern is not without merit. The court acknowledges that vehicles are perishable assets whose value diminishes over time, especially when they are not in active use or proper storage. The applicant’s argument in this regard is genuine and understandable.
12. In Kenya, the right to property under Article 40(1) of the *Constitution* is not absolute. Article 40(6) limits this protection in cases where property is reasonably suspected to have been unlawfully used or acquired. The applicant is not an accused person in the pending criminal matter, however, the subject vehicle has been linked to alleged illicit activity and is currently the subject of separate forfeiture proceedings instituted by the Assets Recovery Agency.
13. The forfeiture proceedings are yet to be concluded, and the vehicle remains a critical item of interest in those proceedings. To release it at this stage, prior to a full determination on whether it is liable to forfeiture, would risk prejudicing the ongoing process. It would also undermine the preservation objective of seizure, contrary to the broader interests of justice.
14. Indeed, the court sympathises with the applicant’s predicament, including the financial loss he may be incurring. However, such hardship does not override the legal necessity to preserve property that is subject to lawful forfeiture proceedings. Any determination on release must await the outcome of those proceedings.
15. In the premises, the notice of motion dated 12th August 2024 is found to be lacking in merit and is dismissed.



RULING DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2025

D. KAVEDZA

JUDGE

In the presence of:-

Ayuo for the Applicant

Karimi Court Assistant.

