



**Kenya Revenue Authority v Gichuki & another (Criminal Revision  
E060 of 2023) [2025] KEHC 11319 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11319 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION E060 OF 2023  
DR KAVEDZA, J  
JULY 31, 2025**

**BETWEEN**

**KENYA REVENUE AUTHORITY ..... APPLICANT**

**AND**

**MOSES WANJAU GICHUKI ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed the application dated 6th May 2025 pursuant to Articles 50, 159(2)(d), 165(6) and (7) of *the Constitution* of Kenya; sections 362 and 364 of the *Criminal Procedure Code*; and sections 2, 200(d)(iii), 210(c), 213, 214(3), and 215 of the East African Community Customs Management Act, 2004. The applicant seeks, among others, orders for stay of execution of the trial court's ruling issued on 4th April 2025 in Kibera Criminal Case No. 396 of 2020, release of the court record for revision, and setting aside of the orders directing release of motor vehicle KBN 202L, allegedly a condemned uncustomed vehicle, to the respondent.
2. The application is supported by an affidavit sworn by Davis Nyamache. The applicant avers that on 17th April 2020, officers attached to DCI Kilimani intercepted motor vehicle KBN 202L, a blue Toyota Mark II, along Galana Road. It was being driven by the respondent. The vehicle was impounded at Kilimani Police Station, and the respondent failed to provide valid importation or registration documents. Instead, he later claimed that the vehicle had been imported into South Sudan and registered there before being brought back into Kenya and affixed with Kenyan number plates.
3. A search conducted through NTSA confirmed registration of KBN 202L by the respondent, but the chassis number of the impounded vehicle differed from the registered one, suggesting they were two separate vehicles. Upon these findings, the vehicle was handed over to the applicant and transferred to the JKIA customs warehouse, where it was formally deposited.



4. The KRA Simba system confirmed that the vehicle had entered Kenya in 2019 as a transit consignment to South Sudan. No re-importation records exist. The respondent was charged with three offences and convicted of possession of uncustomed goods under section 200(d)(iii) of the East African Community Customs Management Act, 2004. The conviction led to the vehicle's automatic condemnation under section 215 of the same Act.
5. The applicant contends that the order issued on 4th April 2025, directing release of the condemned vehicle to the respondent, was unlawful. It failed to consider the provisions of sections 210(c), 214(3) (a) and 215, and the applicant, being in custody of the vehicle, was not a party to those proceedings. This, it is claimed, violated the applicant's right to a fair hearing under Article 50 of *the Constitution*.
6. The court is urged to call for the lower court record, stay execution of the impugned orders, and review or set them aside in the exercise of its supervisory jurisdiction under Article 165(6) and (7) of *the Constitution*.
7. In response, the 1<sup>st</sup> respondent contends that during trial, several requests were made to have the motor vehicle produced in court, but the Investigating Officer failed to comply. He states that the chain of custody was flawed, as the vehicle was moved without court authorisation. The trial proceeded without the court ever inspecting the vehicle. On 17th April 2023, he was acquitted on two counts, convicted on one, and sentenced to one-year imprisonment, which he served fully. He later appealed, but the appeal was dismissed.
8. He notes that KRA, through its officer Davis Nyamache (PW2), participated in the trial, and all documents relied on in this application were already produced. He adds that the trial court made no forfeiture order, and both the court and the DPP agreed to release the vehicle. He argues that this application amounts to re-litigation and that KRA's failure to appeal bars it from now seeking forfeiture.
9. The application was canvassed by way of written submissions which have been duly considered.
10. 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.
11. The subject of this application is the release of motor vehicle registration number KBN 202L, which the trial court ordered the motor vehicle to be released to the 1<sup>st</sup> respondent. The applicant seeks revision of that decision on the ground that the vehicle is liable to forfeiture under the East African Community Customs Management Act, 2004 (EACCMA).
12. The relevant legal framework is found under sections 210 and 215 of the EACCMA. Section 210 lists goods subject to forfeiture, including any vehicle used in the conveyance of restricted or uncustomed goods. Section 215 provides that where a person is convicted of an offence under the Act and any item is liable to forfeiture by reason of that offence, the conviction alone operates as a condemnation of the item without further order. It provides that:

215.

  - (1) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of the offence, then the conviction of the



person of the offence shall, without further order, have effect as the condemnation of the thing.

- (2) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then, on the acquittal of such person, the court may order the thing either—
- (a) to be released to the person from whom it was seized or to the owner thereof; or
  - (b) to be condemned.

13. The record confirms that the 1<sup>st</sup> respondent was convicted on count 3, relating to an offence under the EACCMA. The conviction alone, in accordance with section 215, rendered the vehicle liable to forfeiture. The vehicle, therefore, ceased to be subject to private claim and became condemned in law upon his conviction. The trial court's failure to consider this statutory consequence was a material misdirection.
14. In its ruling, the trial court noted that there was no objection from the prosecution and observed that no specific forfeiture order had been made, such an order was unnecessary by operation of law. The release of the vehicle was contrary to the express provisions of the Act and amounted to an error in the application of the law. The arguments raised by the 1<sup>st</sup> respondent regarding trial irregularities and the absence of new evidence in this application are noted but do not negate the legal effect of section 215 of the Act.
15. Accordingly, the trial court's decision ordering the release of the motor vehicle was made in error and is hereby revised and vacated. The ruling of Hon. A. N. Ongonda dated 1st April 2025 is set aside. The motor vehicle, being condemned property under the East African Community Customs Management Act, 2004 upon conviction, shall remain in lawful custody pending forfeiture proceedings.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:

Ms. Grace for the Applicant

Ms. Karimi Court Assistant.

