



REPUBLIC OF KENYA



KENYA LAW
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**Kemboi v Attorney General & another (Petition E023 of 2025)
[2025] KEHC 11274 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E023 OF 2025
RN NYAKUNDI, J
JULY 30, 2025**

BETWEEN

JUDY JEPKOSGEI KEMBOI PETITIONER

AND

HON ATTORNEY GENERAL 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

RULING

1. What is pending before this Court for determination is a Notice of Motion Application dated 30th June 2025 premised under Article 22(1) & 22(3) of the *Constitution* of Kenya 2010 and Rule 4 of the *Protection of Rights and Fundamental Freedoms, Practice and Procedure Rules 2013* in which the Petitioner/Applicant is seeking the following orders:
 - a. Spent
 - b. That pending the hearing and determination of this application inter-parties and determination thereof this Honorable Court be pleased to grant conservatory orders returning motor vehicle KCK xxx Toyota Probox to Eldoret Central Police Station or Moiben Police Station or Ainaptich Police Station to preserve it.
 - c. That pending the hearing and determination of this constitutional petition by the applicant herein, this Honorable Court be pleased to grant conservatory orders restoring motor vehicle KCK xxx Toyota Probox to either Moiben, Ainaptich or Eldoret Central Police Stations for safe keeping
 - d. Costs of this application be borne by the Respondents in any event.
2. The Application is based on the following grounds among othersw: -



- a. The Applicant acquired motor vehicle KCK xxx Toyota Probox for valuable consideration in a public auction.
 - b. The motor vehicle was refurbished and repaired to make it mobile.
 - c. The motor vehicle was clandestinely removed, seized and trans-located to an unknown address in an opaque operation carried out during a national holiday.
 - d. All efforts to get answers from the 2nd Respondent's officers in Uasin Gishu have been fruitless.
 - e. The Respondents' actions are in contravention of Article 40(3) of the Constitution which protects the applicant's right to own property free from interference by any of the state organs or public officers.
 - f. The Respondent's actions unless checked will contravene Article 47(1) of the Constitution which entitles the Applicant to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - g. The Respondents' actions and omissions amount to a gross violation of the Constitution an infringement of the Applicants fundamental rights and an abuse of the authority granted to them by law.
3. The Application is supported by the annexed affidavit sworn by the Applicant/Petitioner who avers as follows;
- a. That I purchased motor vehicle KCK xxx Toyota Probox from Niki Auctioneers in the year 2021 after it was advertised as an unclaimed property.
 - b. That the motor vehicle had been advertised by the Officer Commanding Station (OCS) Yamumbi.
 - c. That after acquisition, police at Yamumbi Police Station refused to hand over the chattel which necessitated me to apply to court for release.
 - d. That after release I could not immediately use the chattel as it required repair and works to restore it to sound mechanical status at a great expense which exercise lasted about 1 year.
 - e. That I was only able to start using the chattel in 2025.
 - f. That my said car KCK xxx Toyota Probox was seized, translocated and taken to an unknown address by people who claimed to have been DCI Officers (Directorate of Criminal Investigation) under the direction of my local assistant chief and police officers from Moiben Police Station.
 - g. The said officers deceived my son Felix Kipchumba that they were taking the chattel to Ainaptich, Moiben and finally Eldoret Central Police Station but they never reported or booked it to either of them.
 - h. That I together with my family members made frantic efforts only to learn from one Lameck of Mobile No. 0725 xxxx00 that the chattel was being moved to Mombasa by road.
 - i. That I was advised at Ainaptich Police Station to do a complaint to the affected police stations which I did through my advocates on record.



- j. That my complaint was served by a licensed court process server but the same was declined by all addressees except the 1st Respondent.
- k. The Respondents actions of seizing, transferring my motor vehicle KCK 635E Toyota Probox from the location it was taken from was unlawful, unprocedural and out rightly unconstitutional.
- l. That I'm advised by my counsel on record which I trust as true that the actions of the Respondents contravene Article 40(3) of the Constitution which protects citizen right to own property free from interference by any state organs or public officers.
- m. That I'm further advised and which I trust as true that the respondents' actions above contravene Article 47(1) of the Constitution which entitles me to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- n. That without a doubt, the Respondents' actions amount to a gross violation of the Constitution, an infringement of my fundamental rights and an abuse of the authority granted to them by law.

Analysis and Determination

4. That test for granting an interlocutory injunction is well known. The party seeking an interlocutory injunction must show that there is a serious issue to be tried, that she/he would suffer irreparable harm if the injunction were not granted and the balance of convenience favors the granting of the injunction pending a decision on the merits. This test is as set out in *Giella v Cassman* [1973] EA 358. The court in *American Cyanamid Co. v Ethicon Ltd A.C* [1975] 396 Lord Diplock stated the following:

In those cases where the legal rights of the parties depend upon facts that are in dispute between them, the evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination. The purpose sought to be achieved by giving to the court discretion to grant such injunctions would be stultified if the discretion were clogged by a technical rule forbidding its exercise if upon that incomplete untested evidence, the court evaluated the chances of the plaintiff's ultimate success in the action at 50 per cent or less, but permitting its exercise if the court evaluated his chances at more than 50 per cent.

Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as “a probability” “a prima facie case,” or “a strong prima facie case” in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which for detailed argument and mature considerations. These are matters to be dealt with at the trial.

5. The nature of the issues here is that they are involved in movable property of a motor vehicle registration KCK 635E Toyota Probox purchased at a public auction by the applicant of value and



consideration. The averments in the supporting affidavit is indicative of non-investigation with regard to the subject matter subsequently impounded by the National Police service without notice and due process as provided for under Art 47, 48 & 50 of the Constitution. These Articles generally touch on fair administrative actions, access to justice and fair trial rights. There is also the provision of Art 40 on the right to private property. It is the applicant arguments that the motor vehicle was seized, translocated and taken by DCI officers under the direction of the local Assistant Chief and police officers from Moiben police station.

6. The respondents were duly served with the necessary suit papers but they seem to have ignored and made no attempts to file an answer to the notice of motion. This calls upon this court to exercise discretion and grant the orders to a defendant claim. Besides the above principles the guidelines governing the grant of mandatory injunction as set out in the case of *Redland Bricks Ltd vs Morris* (1969) 2 ALL ER 576 are also applicable to the facts of this case. Thus:
 - i. The grant of mandatory injunction is entirely at the discretion of the court. Every case must depend essentially upon its own circumstances.
 - ii. A mandatory injunction can only be granted where the plaintiff shows very strong probability upon the facts that grave damage will accrue to him in future
 - iii. Damages will not be sufficient or adequate remedy if such damage does happen
 - iv. Unlike the case where a negative injunction is granted to prevent the continuance or recurrence of a wrongful act, the question of the cost to the defendant to do the work to prevent or lessen the likelihood of a future apprehended wrong must be and element to be taken into account.
7. It is my utmost considered view that the Respondents/Defendants have diminished willingness to voluntarily release the subject motor vehicle to the Petitioner/Applicant without according her a hearing on how she acquired the motor vehicle through a public auction. It is only the court intervention which can compel the Respondents/Defendants to do so. Hence, this order that the Respondents/Defendants forthwith releases to the officer commanding Eldoret Central police station or Moiben Police station or Ainaptich Police station to preserve it as provided in Order 40 Rule 1 of the Civil Procedure Rules pending the hearing and determination of the petition dated 30th day of June 2025.
8. This order is made in chambers this 30th of July 2025 for publication following a hearing held on 23rd July 2025. Further to the above, the petition has been admitted for hearing and same be canvassed by way of written submissions in which the petitioner shall have 14 days to file and serve the Respondents/Defendants and thereafter it is expected rejoinder submissions shall follow in any event.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT FOR PUBLICATION ON 30TH JULY 2025

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R. NYAKUNDI

JUDGE

