



REPUBLIC OF KENYA



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**Orinda v Director Criminal Investigation (DCI) & 3 others (Criminal Revision
E044 of 2025) [2025] KEHC 11563 (KLR) (Crim) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E044 OF 2025**

MW MUIGAI, J

JULY 29, 2025

BETWEEN

KEPHA OLUOCH ORINDA APPLICANT

AND

DIRECTOR CRIMINAL INVESTIGATION (DCI) 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE (IG) 2ND RESPONDENT

**OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS
(ODPP) 3RD RESPONDENT**

ADDAH NDUATA NDAMBUKI 4TH RESPONDENT

RULING

1. The Applicant filed the application dated 17/3/3024 under Certificate of Urgency seeking orders that:
 - (a) The Court to exercise revisionary powers with respect to proceedings and consequential orders of the Trial Court in Miscellaneous E4772 OF 2024 and E 4757 OF 2024.
 - a. The Director of Criminal Investigations Economics & Commercial Crime Unit be ordered to release Motor vehicle registration No KDP 300V.
 - b. The 2nd respondent to be ordered to remove caveat.

Grounds Of Application

2. The application is brought on Grounds That:
3. Two conflicting orders were issued over Motor vehicle registration No. KDP 300V Toyota Prado black in colour



4. The Directorate of Criminal Investigations DCI filed Application dated 17/12/2024 in Miscellaneous 4772/2024 and was granted orders on 17/11/2024 allowing the DCI to seize and detain the subject motor vehicle.
5. The Applicant also filed Miscellaneous E4757 OF 2024 seeking release of the vehicle and removal of caveats. The Court allowed the application on 28/1/2025.
6. The Applicant moved the Court in Miscellaneous 4772/2024 seeking to set aside the warrants of attachment issued on 17/12/2024 and the Court referred the matter to the High court for revision in light of the conflicting decisions.
7. The Applicant's case is that the orders dated 17/12/2024 and warrants of attachment should be set aside. That the orders were an illegality after being issued ex parte and that the Applicant was not served with the warrants of attachment.
8. That the Respondent participated in Miscellaneous Application No. 4757 /2024 and failed to inform the Applicant and the court about the existing orders.
9. That the orders issued releasing the vehicle to the applicant should be upheld. The orders were founded on an Application which was heard on merit .The Respondent has not preferred any charge against the Applicant or any 3rd party and applicant is also willing to present the motor vehicle for photographs and investigations.
10. That the vehicle was detained on 11/12/2018 before orders were issued on 17/12/2024 making the process an illegality. The 1st Respondent who participated in the case through the Director of Public Prosecution did not inform Court of the existence of the orders.
11. The Applicant is the owner of the subject vehicle and is also a business man. The vehicle continues to waste away to the applicant's detriment.

Supporting Affidavit

12. The Applicant filed his affidavit in support of the application. He depones that he purchased the subject vehicle from Addah Nduta 4th Respondent at Ksh 6 million. She purchased it from Ngong Road although it had not been transferred in her favor .That they went to Car Yard where they confirmed that she bought it. .
13. That in July 2024, he was apprehended by Economic & Commercial Crimes Unit for interrogation. That his attempts to take a loan with NCBA was also frustrated after he was informed of a caveat placed by the 1st respondent on allegation of impersonating a police officer. He had never been summoned on the issue.
14. That on 11/12/2024 he was summoned to the DCI and was requested to avail the motor vehicle for photographs. However, he was directed to drive it DCI Kiambu where he was ordered to surrender the keys. The vehicle was detained, that no inventory was taken and it remained parked in the open yard. The applicant refers to the case of R-Vs- John Nganga Mbugua (2014) eklr and urges that photos can be taken pending investigations and that it is in the interest of justice that the vehicle be released.

Replying Affidavit.

15. The 1ST -3RD Respondents filed the affidavit of No 2413462 BOAZ OGAGA.The deponent is the Investigating Officer attached at Financial Investigation Unit.



16. His case is that he has been investigating claims of stealing by directors' contrary to Section 282 Penal code, Conspiracy to defraud contrary to Section 317 *Penal Code* and Money Laundering Contrary Section 3 (b) (1) of the Proceeds of Crime & Money Laundering Act.
17. That the Respondent received on 19/9/2024 complaint from Dinta Devani Pathania Managing Director of Pelican Signs Ltd alleging fraudulent sale of the Company's property No. LR NO 209 /12555 and LR NO 37/754 situated in Nairobi worth Ksh 300,000,000/-, the property of Pelican Signs Ltd
18. That the Directors of Pelican Signs Ltd as per records t the Business Registration Services are; Abhy Singh Pathnia, Orego Odhiambo Fredrick, Addah Nduta Ndambuki, Devani Balkrishna Sudhagauri, Balkrishna Ramji Devani, Samuel Ngugi Ndinguri & Dinta Balkrishna Devani.
19. That the Directors never signed any sale agreement and did not agree to disposition of property. That property was disposed of at Ksh 110 million through Anya Kalwa & Co Ltd.
20. The property was subject to Succession [Cause] proceedings following demise of the Directors of Pelican Signs Ltd Balkrishna Ramji Devani Haribhai (deceased) and Sudhagauri Ramji Devani (deceased)
21. That the 4th Respondent, Addah Ndutah Ndambuki trading as Dream Hub Trust, purchased vehicle KDP 300V Toyota Prado black in colour at 7,550,000/= which amount was suspected to be proceeds of sale of the company's property on receiving money from 1 of the Directors of Pelican Signs Ltd after sale of the properties. That the vehicle is suspected to be part of proceeds of crime.
22. That the DCI detained the vehicle on 11/12/2024 in connection to POCAMLA and the same will be used as evidence in connection with the offence as proceeds of crime. That the orders were sought by the DCI on 17/12/2024 in Miscellaneous No E4757 of 2024 for detention and preservation of the Motor vehicle until completion of investigations.
23. The exparte order was served on the Applicant, Kepha Oluoch Orinda and Addah Nduta Ndambuki, there was no time to serve the physical copy.
24. That the DCI was served with an order to release the vehicle on 5/2/2025 vide Miscellaneous Application E4772 of 2024. The Respondent contends that the applicant failed to disclose material facts to the court that there was a preserving order issued by the in Miscellaneous Application No. E 4757/2024.
25. Further that the 4th respondent was not made a party in Misc. 4772/24 and the Directorate of Criminal Investigations was not granted reasonable time to defend the application. The application was filed on 16/12/2024 and the orders were granted on 28/1/2025.
26. That release of the vehicle is an infringement to the administration of justice to and interfering with evidence unless there is urgent intervention by the Court, there is likely to be serious miscarriage of justice.
27. That the Applicant is guilty of duplication of proceedings and challenging the exparte orders is with deliberate threat to curtail the investigations. The case of stealing by Directors c/s 282 of the *Penal Code* conspiracy to defraud c/s 317 of the *Penal Code* and money laundering c/s 3 (b) 1 of POCAMLA No 9 of 2009 has to be investigated to its logical conclusion for the Prosecution to tender sufficient evidence.
28. The subject vehicle is an exhibit and also subject to forfeiture under POCAMLA.



29. The respondent prays for review of the orders issued in Misc Criminal Case No E4772 of 2024. The application lacked merit and was not brought in good faith.

Written Submissions.

The Applicant's Submissions

30. The applicant filed written submission dated 21/4/2025. The applicant framed issues for determination as Whether the court is properly clothed with jurisdiction to determine the case, Whether there is any irregularity illegality in the court order issued by the lower court, whether any party orchestrated the mischief and which order takes precedent ,
31. The applicant's case is that existence of conflicting orders have far reaching and debilitating consequences and also likely to cause miscarriage of justice.
32. The vehicle is held on account of exparte orders. That the court has jurisdiction to look into correctness, legality or propriety of any finding of the lower court.
33. That the exparte orders were irregularly obtained to sanitize the 1st Respondent's action and to give effect to retrospective action. That the irregularity does not meet the tenets of justice and poses a situation of the ends justifies the means and the court should expunge the exparte orders for being manifestly irregular.
34. Further that the 1st respondent orchestrated the mischief when it omitted to serve the applicant with the court order. That service is not demonstrated.
35. The applicant served the respondent with the application in Miscellaneous E4772/2024 and the respondent participated in the proceedings.
36. The respondent waited for the application to be determined and refused to comply with orders on account of an existing exparte court order which was not disclosed.
37. That the 4th Respondent has also filed an application for joinder in Misc. Application E4772/2024 which is pending before the court and this court cannot make a finding on the 4th respondent's application
38. On which of the two orders should take precedent, the Applicant submits that the Misc E4772/2034 was heard on merit and should be preferred while exparte orders were irregularly obtained and the respondent mischievously failed to disclose its existence.
39. The applicant further submits that the 4th Respondent claim that she did not receive the purchase price from the applicant raises fundamental questions. The Respondent has not filed any case challenging ownership of the vehicle vested on the applicant.
40. That the issues in the Respondent's affidavit should be preferred on appeal and not before the revision court.
41. That the court cannot delve into merits of the case and substitute it with its own views. The Applicant relies on the case of George Aladwa Omwera -Vs- Republic 2016 KEHC 7437 KLR.



The 1st, 2nd } 3rd Respondent's Submissions.

42. The prosecution filed submissions on 28/5/2025 and frames issues as:
- Whether the court had jurisdiction to issue *ex parte* orders , Whether the court acted without jurisdiction in releasing the items not produced in Miscellaneous E4772/2024 and Whether release of motor vehicle will prejudice the pending investigations and subsequent proceedings.
43. The state submits that jurisdiction to issue *ex parte* orders is not contested by the applicant.
44. That the applicant was aware of the *ex parte* orders as per the that investigation officer's affidavit that the applicant made several follow ups at the police station.
45. That detention was within the law as per Section 25 of the *Criminal Procedure Code* and Section 57 (2) of the *National Police Service Act* giving police power to detain and search vehicles and persons.
46. The court lacked jurisdiction to release an item that had not been produced as evidence in court. The prosecution relies on the case of *Elijah Nyakebondo Onsongo Vs Republic* 2017 KEHC where the court concluded that it lacked jurisdiction to order release of the subject vehicle until they are produced as an exhibit.
47. That the court orders were issued bereft of jurisdiction and should be vacated. The orders are also prejudicial to investigations and subsequent prosecution.

Analysis & Determination.

48. This Court considered the matter before Court, the pleadings and written submissions and perusal of Trial Courts proceedings in Miscellaneous E4772/2024 & Miscellaneous No E4757 of 2024 and issue(s) that emerge for determination are the High Court jurisdiction over the matter and in light of 2 Court orders from different Courts over the same subject matter which order is applicable or how both Court orders should be enforced.
52. The issues for determination of the application are hereby framed as follows :-
- a) Whether the *ex parte* orders and warrants of attachment were irregular or an illegality
 - b) Whether Misc 4772/2024 subsequently filed and orders issued by the court were irregular, illegal or improper in the circumstances presented.
 - c) Whether the court has power to release the subject vehicle in the pendency of investigations.

Jurisdiction

49. Article 165 (6) & (7) of *the Constitution* refers to the supervisory jurisdiction vested on the High court which is exercised to prevent miscarriage of justice.
- (6) (6) 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.



- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
50. Section 362 as read with Section 364 of the [Criminal Procedure Code](#) provides for the revisionary jurisdiction of the High Court. And 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.”
51. In Public Prosecutor vs. Muhari bin Mohd Jani and another [1996] 4 LRC 728 at 734, 735 it was held:
- “The powers of the High Court in revision are amply provided under section 325 of the [Criminal Procedure Code](#) subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.
52. The records of the Trial Courts filed through Miscellaneous case No 4772/2024 and Misc 4757/2024 have been availed for perusal to this Court. The two conflicting orders issued on 17/12/2024 and 5/1/2025 related to the motor vehicle registration number KDP 300V.
53. The Trial Court in Misc 4757/2024 pursuant to Exparte Notice of Motion filed on 17/12/2024 in Chief Magistrate’s Court vide Section 118 & 121(1) of [Criminal Procedure Code](#) and Section 180(1) of the [Evidence Act](#) issued warrants of seizure /attachment to the DCI to detain the subject vehicles Reg KDP 400V Mazda Atenza belonging to 4th Respondent Addah Nduta Ndambuki & Reg KDP 300V Toyota Prado belonging to Kepha Orinda until the logical conclusion of investigations. The orders be directed at and be served to 1st & 2nd Respondents in the Application and preservation and detention orders be placed on the 2 vehicles as investigations in relation to money laundering after being stolen from Pelican Sign Ltd from sale of Land Parcel No 209/12555 are launched. With Supporting Affidavit of the Investigation Officer, IP Boaz Ogaga detailing circumstances leading to the investigations, the Trial Court granted the orders sought on 17/12/2024.
54. The Trial Court in Miscellaneous Criminal application No. 4772/2024 vide Notice of Motion Application filed on 16/12/2024 and sought orders that 1st Respondent DCI be ordered to release motor vehicle Reg no KDP 300V and the 2nd Respondent to remove the caveat placed on motor vehicle Reg no KDP 300V The Respondents vide Grounds of Opposition by 3rd Respondent ODPP, the 1st & 2nd Respondents Replying Affidavit sworn by CI Joseph Wafula & IP Boaz Ogaga detailing circumstances that led to onset of investigations and detention/preservation of the 2 vehicles. The parties through Counsel extensively submitted before Trial Court and on 28/1/2025 the Court rendered its Ruling. The Court found that the Prosecution had not shown that they intended to charge and prosecute the Applicant and more so there were no pending criminal or civil proceedings



- in any Court on the same subject matter and to avoid the motor vehicle from wasting away the Court therefore granted the application for the said motor vehicle to be released and caveat removed.
55. This Court finds that the orders and proceedings emanate from the Magistrates' Courts which each Court had/has equal, similar, concurrent and competent jurisdiction to hear the matter on merit.
56. Secondly, the Court is moved by parties and/or through Counsel based on pleadings filed or charge(s) or Information filed. *Galaxy Paints Company Limited V. Falcon Guards Limited* Court of Appeal Case Number 219 OF 1998 (C.A.) The Court is thus bound to proceed hearing and determination based on what pleadings filed and evidence adduced or submissions made to enable the Court grant relevant legal and lawful orders.
57. Therefore, each of the Magistrate's Courts dealt with the pleadings (Application & Responses) filed and made findings on what was presented in the respective Court and this Court finds no irregularity or illegality incorrectness or impropriety with the proceedings and orders granted in Miscellaneous case No 4772/2024 and Misc 4757/2024 they are both valid, legal and regular orders of the Trial Courts.
58. The main issue is that upon grant of *ex parte* orders in, Misc 4757/2024, instead of parties attending the same Court to have the *ex parte* orders vacated by hearing and determination of the subsequent application housed in Miscellaneous case No 4772/2024, either by design or default the parties moved the other Trial Court and there was material non disclosure to the Court that earlier orders were granted in another court.
59. The Court heard the matter *inter partes* and granted orders on merit too. The issue is in light of 2 Court orders from Courts of similar jurisdiction how are these orders to be implemented or enforced.

Whether the *ex parte* orders and warrants of attachment were irregular or an illegality

60. Section 118 of the [Criminal Procedure Code](#) provides that :-

Where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a Magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law

61. The orders were issued in *ex parte* proceedings premised on affidavit evidence. Firstly, the orders are intended to be *ex parte* at the first instance.

Section 118A of the CPC provides that:

“An application for a search warrant under section 118 shall be made *ex parte* to a magistrate.”

62. In the case of *Mape Building & General Engineering v Attorney General & 3 Others* [2016] eKLR the Court held at paragraph 73 to 75 that :-

“The 2nd Respondent moved the court. Statute law under Section 118 of the [Criminal Procedure Code](#) and Section 180 of the [Evidence Act](#) allowed them to do so. The application could be made *ex parte* for very obvious reasons. To hold otherwise would not be in the



public interest. It would indeed destroy the very fabric of forensic investigations. No suspect or offender, knowing that there existed evidence which if not destroyed or vanquished would lead to his guilt or liability, can be expected to sit back once notified of possible investigations. The suspect would rid the evidence out of sight and reach. Consequently, the investigator must where there is a foundational basis be allowed and be in a position to seize and secure the evidence.”

Further that”

‘It can thus be clearly understood why warrants or seizure orders are obtained ex parte when any matter is still at the investigation stage. The justification seems to fall within the provisions of Article 24 (1) of *the Constitution*.”

63. In James Humphrey Oswago v Ethics and Anti-Corruption Commission [2014] eKLR Hon. Mumbi Ngugi LJ (as she then was) held that :

“With regard to the public interest, the administration of justice and the apprehension of offenders, I believe the section is intended to ensure that investigating authorities can gain access to incriminating information or evidence without the suspected offender getting an opportunity to conceal or destroy such evidence. That being the case, it would clearly defeat the purposes and intention behind searching premises as contemplated under section 118 of the *Criminal Procedure Code* set out above if an application for a search warrant were to be made inter partes, with notice, and for the person in respect of whose property or premises the warrants of search are directed to be heard before such warrants are issued.”

Secondly, the affidavit must demonstrate grounds or reasonable suspicion of crime commission.

64. In Vitu Limited –Vs- The Chief Magistrate Nairobi & two others H.C. Misc. Criminal Application No. 475 of 2004, Osiemo J held that :-

“It is therefore expected that when a police officer or any other investigator approaches the Court for a warrant, there must be reasonable suspicion of an offence being about to be committed or having been committed...”

65. The application dated 17/12/2018 was presented before the court on 17/12/2018 the affidavit of BOAZ OGAGA was clear of intended investigations of Motor vehicle Registration number No. KDP 300V related to complaints received from directors of Pelican Signs Ltd after the company was defrauded of Ksh 110 Million after land parcels were sold . Other offences relate to Stealing by employees and proceeds used to purchase the vehicle.

66. The same grounds have been replicated in the affidavit filed before this court by the Investigation Officer. The ex parte orders were issued within the law and also the Applicant complied with procedure. The applicant has further argued that the orders were obtained after the vehicle had been seized and parked at the DCI yard on 11/12/2018.

Section 60 of the *National Police Service Act* provides that :-

“When a police officer in charge of a police station, or a police officer investigating an alleged offence, has reasonable grounds to believe that something was used in the commission of a crime, is likely to be found in any place and that the delay occasioned by obtained a search warrant under Section 118 of the *Criminal Procedure Code* will in his opinion substantially prejudice such investigation, he may, after recording in writing the grounds of his belief and such description as is available to him of the thing for which search is to be made, without



such warrant, enter any premises in or on which he or she suspects the thing to be and search or cause to be made for, and take possession of such thing.”

67. The Directorate of Criminal Investigations did not disclose to the court that the vehicle was already in police custody at the time of seeking warrants. On this ground the applicant’s grievance is that the orders were obtained to perpetrate and rubber stamp an illegality. With respect Section 26 1(c) CPC envisages situations where a Police Officer may stop search and detain any aircraft vessel or vehicle.

Any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained

There was no attempt to sanitize an illegality or irregularity.

68. However, the Court cannot go into the merits or impugn the Trial Court’s discretion, the revision is not to determine issues regarding trial where evidence will be presented on the burden and standard of proof in determination of the case but to correct or prevent a miscarriage of justice.

I find that the exparte orders were issued within the law and were intended to facilitate investigations. After grant of the exparte orders the case was also granted a mention date on 3/2/2025 when further directions would issue. The parties did not comply until the Applicant sought and was granted orders subsequently from another Court.

Whether Miscellenous Application Case No. 4772/2024 subsequently filed and orders issued by the court were irregular, illegal or improper in the circumstances presented.

69. As submitted, existence of two files over the same subject matter and same parties is a duplication of efforts and misuse of judicial time. The court issuing exparte orders did not become functus officio. The parties ought to rightfully have been before the 1st Trial Court to seek review of the exparte orders upon presentation of new and further evidence to warrant setting side earlier orders. More- so when there was a mention date before the Trial Court of 3/2/2025.

70. Section 121 of the *Criminal Procedure Code* provides that.

- a. When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.
- b. If an appeal is made, or if a person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.
- c. If no appeal is made, or if no person is committed for trial, the court shall direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it otherwise.

71. The Applicant blamed the Respondent for failing to serve the order and informing the court of existing orders. The exparte orders were directed at the Applicant and the 4th Respondent. The 4th Respondent filed her affidavit seeking joinder in Miscellaneous E4772/24. She indicates that she was aware of the investigations and exparte orders. The Applicant on the other hand disputes service and contends that the Respondent failed to disclose material facts pertaining to the case. The exparte application had orders of service to Respondents. Failure to serve the order after obtaining it was a fatal omission that informed irregularity in the proceedings brought before this court.

Further, the Respondent did not file any response to the applicant’s application for release of the motor vehicle. Had that been done, the court would have directed parties to Misc. 4757/2024 where the parent orders were issued.



Despite the procedural irregularity, I find that the orders were issued within the law. The DCI did not respond and /or demonstrate before the court in Misc 4772/2024 grounds for seizure and indefinite / continued detention of the vehicle.

72. Any detention without reasonable or lawful grounds violates Article 40 of *the Constitution* and the owner's right to user and possession of property. The court in *Katwai vs. Republic* (MSCR.APP.305/2023) [2024] KEHC 4021 (KLR) (Crim) (22 April, 2024) further stated that;

“----the detention is a gross violation of his constitutional right to own property under Article 40(1) and no public interest is served.”

73. The Applicant's right to own property is protected and the Justice system by virtue of Article 48 & 50 of *the Constitution* shall protect the right to own property but subject to allowing investigations into reported claim(s)

74. I find that the error noted was not committed by the Court that the revisionary power of the court should be invoked to cure multiplicity of suits through consolidation. The lead file should be E4757/2024 where the underlying warrants of attachment was issued.

Whether the court has power to release the subject vehicle in the pendency of investigations.

75. Section 121 of the provides that property seized may be detained until conclusion of the case and its appeal or during investigations.

76. The prosecution urges that the court becomes seized of jurisdiction after the items/ property has been produced as an exhibit in court

77. In the case of *Republic -Vs- Henry Were Obuya & another* [2006] eKLR the High court set aside orders allowing release of two shipment containers that were subject matter to Charge of forgery and attempted stealing. *Sergon J* held that

“... the fact that the parties involved did not oppose the application for the release of the containers did not give the trial court any jurisdiction to issue to orders. In a nutshell the court had no control over the proposed exhibits until they are submitted to court as exhibits in evidence in the usual manner prescribed by law.”

78. I have considered the position in law and decisions of the High court which I find to be persuasive. Each case must be determined on its merit. The facts in this matter are also peculiar in that the Proceeds of Crime & Money Laundering ACT POCAMLA provides for forfeiture of property and proceeds of crime such that the subject vehicle would be forfeited at the end of the trial.

79. However, reading of Section 121 points out the courts discretion to determine holding of property that is suspected to be involved in crime. The property can only be detained if there is a trial or investigations. Section 121 (3) is relevant and provides that:-

(3) 3) If no appeal is made, or if no person is committed for trial, the court shall direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it otherwise.

80. The Police derive their legal mandate from Article 244& 245 of *the Constitution*; Section 24 of *National Police Service Act* 2011 on functions of Police Officers & Section 26(1) (c) of CPC; the Police may exercise the power to detain and search aircraft, vessels, vehicles and persons Section 118 Power to issue search warrant (if need be and obtain Court order) & Section 121 of CPC Detention of property seized



- (1) When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.
81. The detention under S. 24(e) and (g) of the NPS Act (Cap 84) and under any provision of the law including S.121 of the CPC, the Court is enjoined to facilitate seizure and detention is not meant to be for an indefinite period but only for purpose of investigations.
82. The subject motor vehicle was seized on 11/12/2024 .The investigating officer later sought warrants on 17/12/2024 pending investigations .The respondent’s case is that they intend to prefer charges under the *Penal Code* and the vehicles also form proceed of crime and are part of processes of money laundering . Therefore, the vehicle was seized and has been detained within the law.
83. The investigations are conducted two-fold; primary investigations stage that is conducted by DCI/ Police and then the secondary stage which is after ODPP issues advice on what should be added or eliminated for the case to be filed in Court. From the detailed Affidavits filed in the Trial Courts, there is genuine basis and reason to investigate the report claims and more particularly, sale, purchase payment, possession ,transfer, registration, ownership of the said vehicle before the Trial Court and if/when criminal charges are preferred.
84. However, on the other hand, the investigations cannot be over an unreasonable period of time and DCI is duty bound to act expeditiously after obtaining warrants investigations and decision making on whether criminal charge(s) will be preferred. It is trite that seizure warrants are not meant to be absolute or for an indefinite period.
85. In *Brown Field Developers Limited –Vs- Banking Fraud Investigations Unit & 4 others* [2016] eKLR , the High Court held at paragraph 51

“ that search warrants are issued as a last resort and are not meant to be absolute “.... Section 118 of the *Criminal Procedure Code* is also clear that such warrants for seizure are to be granted or issued by the court not just where the court is satisfied as to the need to issue them but also in so far as is necessary for the conduct of the investigations. If it is not necessary, the court ought not to issue the same. Where also there is an alternative way of investigating and obtaining the necessary evidence, the court ought not to issue the same. Secondly, the resultant seizure ought not to be absolute but only for the period of investigation. Certainly, the period of investigation must not be an indefinite period if only to ensure that a person’s property is not absolutely appropriated or expropriated through a warrant of seizure.”

86. I find that the warrants of attachment have granted detention and preservation for 7 months without any charges and /or feedback on the status of investigations. The exhibits are meant to be preserved in good condition and this should be guaranteed as per the law. Whereas Law enforcement should exercise legal mandate to investigate reports/claims, indefinite detention without preferring charges does not guarantee the preservation and also breaches Applicant’s right to property.

Disposition

87. In exercise of the power of the High Court under Section 362 as read with Section 364 of the *Criminal Procedure Code*, the following orders are hereby issued in revision.
1. The Miscellaneous Application No 4757/2024 and Miscellaneous Application 4772/24 subsequently filed relate to the same subject matter and parties and are hereby consolidated.
 2. That Miscellaneous E4757/2024 is the lead file, orders issued in 4772/2024 dated 5/1/2025 are hereby set aside.



3. The orders dated 7/12/2024 are varied as follows:
4. The respondent shall detain the vehicle for further 90 days (3 months) to conclude investigation and/or prefer intended charges.
5. The caveat shall remain in force during the said period. Failure to take steps ex parte orders/ warrants shall lapse at the end of the said period.
6. The matter will be mentioned before the Trial Court in Misc. 4757/2024 after 90 days (3 months) for directions and release of the motor vehicle forthwith if no charges are preferred as provided in Section 121(3) CPC.
7. If charges are preferred, the Trial Court shall hear and determine the issue of release or retention of the said motor vehicle as exhibit in Court.

JUDGMENT/RULING DELIVERED DATED & SIGNED IN OPEN COURT CRIMINAL DIVISION AT NAIROBI ON 29/7/2025 VIRTUALLY/PHYSICALLY.

M.W. MUIGAI

JUDGE

