



Watu Credit Nominees Company Limited v Republic (Miscellaneous Criminal Revision E025 of 2023) [2024] KEHC 6836 (KLR) (29 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL REVISION E025 OF 2023**

GMA DULU, J

MAY 29, 2024

BETWEEN

WATU CREDIT NOMINEES COMPANY LIMITED APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 4th May 2023 brought under Section 362 and 389 of the *Criminal Procedure Code* (Cap.75) filed through counsel Mwazighe & Company Advocates.
2. The prayers in the application are as follows:-
 1. (Spent).
 2. That the court be pleased to exercise its discretion in revision of the orders of forfeiture made by Hon. Principal Magistrate D. M. Ndungi and order the release of motor cycle registration number KMFY 019D to the applicant.
 3. That this court do make any such further or other relief it may deem just to grant in the circumstances.
 4. That costs of the application be in the cause.
3. The application has grounds on the face of the Notice of Motion and was filed with a supporting affidavit sworn on 4th May 2023 by Nicholus Marinda Mwachungo, the Assistant Risk Manger, Coast Region of the applicant company.



4. The applicant also filed a supplementary affidavit sworn by the same deponent on 22nd November 2023, deponing that Car and General (Trading) Ltd were the original registered owner of the subject motor cycle.
5. I have not seen a replying affidavit in opposition to the application, but the applicant's counsel and the Director of Public Prosecutions filed written submissions to the application which I have perused and considered.
6. I note that the Director of Public Prosecutions has opposed the application on the ground that the trial Magistrate had statutory powers to forfeit the said motor cycle, and that due notice was given by the trial court according to the law, before forfeiture orders were made.
7. Having considered the application and rival submissions, I was only supplied with a skeleton file which contains a copy of the charge sheet and the judgment, but not the record of proceedings relating to the forfeiture.
8. That being so, I am not persuaded that the trial court complied with the law and issued proper notice before forfeiture of the motor cycle, as argued by the Director of Public Prosecutions.
9. I thus find that this court is entitled to invoke its revision jurisdiction under Section 362 of the [Criminal Procedure Code](#) (Cap.75), to review the orders of the trial court, for justice to be seen to be done.
10. I thus allow the application and revise and set aside the orders of forfeiture made by Hon. Principal Magistrate D. M. Ndungi, and order that the motor cycle registration number KMFV 019D be released to the applicant herein.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF MAY 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Mwandoto for applicant

Mr. Sirima for the State

