



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwalenga v Kilogho (Suing as the administrator of the Estate of Rophus Mwadime Kilogho (Deceased)) (Miscellaneous Civil Application E029 of 2022) [2023] KEHC 17615 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17615 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CIVIL APPLICATION E029 OF 2022**

**GMA DULU, J**

**APRIL 26, 2023**

**BETWEEN**

**VIVIAN MBONE MWALENGA ..... APPLICANT**

**AND**

**MACKRINA SHIGHARE KILOGHO ..... RESPONDENT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF ROPHUS MWADIME  
KILOGHO (DECEASED)**

**RULING**

1. This is a notice of motion dated March 14, 2023 filed under order 51 rules 1 and 3 of the [Civil Procedure Rules](#) and section 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) (cap 21).
2. The prayers in the application some of which have been spent, are as follows:-
  1. (Spent).
  2. (Spent).
  3. That the respondent be restrained from selling motor vehicle KCM 856Z pending hearing and determination of the application and intended appeal.
  4. That the respondent be ordered to release the said movable property motor vehicle KCM 856Z unconditionally as the attachment was improper/illegal pending the hearing and determination of this application and the appeal.
  5. That the applicants have already deposited the decretal sum of Kshs 703,250/= in a joint account as per the directions given by the court as mode of security pending hearing and determination of the application on November 4, 2022.



6. (Spent).
7. That costs of the application be awarded to the defendant/applicant.
3. The application has grounds on the face of the notice of motion, which was filed with an affidavit sworn on March 14, 2023 by Nannungi Mariat Advocate of Kimondo Gachoka & Company Advocate for the applicant. It was principally deponed in the supporting affidavit, that the time for depositing the decretal amount was extended by court on January 17, 2023 and the decretal amount paid on February 18, 2023 but the respondent attached the subject motor vehicle on January 9, 2023 while time had stopped running on December 15, 2022.
4. The application was opposed through a replying affidavit sworn on March 14, 2023 by Mackrina Shighare Kilogho in which it was deponed that the stay orders of execution having lapsed on September 28, 2022, the applicant thereafter, filed an application dated November 4, 2022 wherein the judge issued stay order on November 15, 2022 which expired on December 15, 2022.
5. It was deponed further that the further extension of stay orders lapsed on February 14, 2023 but the deposit of the decretal sum was made on February 18, 2023 which was after the stay period had lapsed. It was lastly deponed that the attachment during the court Christmas vacation was lawful.
6. Counsel on both sides opted to rely on the affidavits filed and did not file written submissions to the application.
7. This being an application for restraining orders and for release of a motor vehicle which has been attached and having considered the application and replying affidavit filed, in my view, the attachment of the motor vehicle was done within the period when the stay orders granted had lapsed, and the respondent had not been made aware by the applicant or his advocate, of any extension of the stay of execution orders. In my view therefore, the attachment of the motor vehicle was lawful.
8. Though the applicant claims to have now deposited the decretal amount, that deposit was not a payment to the respondent herein but a payment into a joint interest earning account, of which the respondent could not be aware unless they or their advocate was informed before attachment. In the present case, there is no allegation such information about the deposit of the money was conveyed to the respondent or their advocates before attachment.
9. In my view, since the attachment of the motor vehicle was lawful, the most sensible thing for the applicant to do at this stage, is to discuss with the respondent on how to pay the auctioneer's attachment fees. This court cannot make orders on same, as the attachment has already occurred and there is no evidence that there were stay orders in force at that time of attachment.
10. I find that the present application is unmerited. I dismiss the application herein with costs to the respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 26<sup>TH</sup> APRIL, 2023 AT VOI.**

**HON. GEORGE DULU**

**JUDGE**

**In the presence of:**

**Mr. Otolo – court assistant**

Ms. Nannungi for applicant

Mr. Wachenje for respondent

