



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL APPEAL NO. 170 OF 2012**

**CAESAR NJAGI KINGURU ..... APPELLANT**

**VERSUS**

**JOSIAH MWANGI MARIGI ..... RESPONDENT**

*(Being an appeal from the judgment/decree of the Senior Principal Magistrate's Court at Kitui of Hon A.G. Kibiru SPM in Senior Principal Magistrate Case No. 66 of 2006 dated 2<sup>nd</sup> October 2012)*

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*(Before B. Thurania Jaden J)*

**RULING**

The application dated 14/12/2012 is brought under **Order 51 Rule 1, Order 42 Rule 6 and 32** of the **Civil Procedure Rules** and **Sections 1A, 1B and 3A** of the **Civil Procedure Act**.

The application seeks the following orders:-

1. **“(Spent).**
2. **THAT, this Honourable Court be pleased to order a stay of execution of the judgment/decree of the learned trial magistrate, the Hon. Mr. A.G. Kibiru SPM dated 2/10/2012 in Kitui SPMCC No. 66 of 2006 because the judgment did not find as ought to be who between the appellant and the Respondent was the owner of motor vehicle Reg. No. KUM 220 which is what the case was all about yet he appreciated the motor vehicle in many aspects belonged to the Appellant. The judgment before the eyes of the law was no decision at all since it caused more grievance to the Appellant than when he first sought court's intervention in the matter on 2/3/2006 seven years down the line despite there being overwhelming evidence that he is actually the owner.**
3. **THAT this Honourable Court be pleased to order release of motor vehicle Reg. No. KUM 220 to the Appellant as the owner and/or order its transfer from the custody of Kitui Police Station to Machakos even if at the Appellant's costs.**
4. **THAT the costs of this application be provided for.”**

The application is supported by the affidavit of the applicant, **Caesar Njagi Kinguru** sworn on 14/12/12.

According to the said affidavit, motor vehicle **Reg. No. KUM 220** was placed under the custody of **Kitui Police Station** pending the hearing and determination of the suit in **Kitui PMCC No. 66 of 2006**. The Applicant averred that the record of appeal has been availed and the court has the discretion to issue the orders sought.

In opposition to the application, the Respondent swore a replying affidavit on 5/2/2013. The Respondent is opposed to the release of motor vehicle in question. The Respondent also claims ownership of the motor vehicle and wants the motor vehicles released to him.

The judgment of the lower court dismissed both the Plaintiff's suit and the Defendant's counterclaim. The Applicant was the Plaintiff in the lower court and had sought declaratory orders *inter alia* that the motor vehicle in question belonged to him. In his counterclaim, the Respondent who was the 1<sup>st</sup> defendant counterclaimed, *inter alia* that the Applicant be ordered to transfer the motor vehicle to him or in the alternative that the Applicant do refund the **Kshs.320,000/=** purchase price.

With a dismissal of the plaint and the counterclaim the dispute was left unresolved. There are therefore no orders to be stayed by this court. The question of ownership and therefore the release of the motor vehicle can only be determined after hearing of the appeal. The parties should therefore move to fix the appeal for hearing on a priority basis. Application dismissed with costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this **11<sup>th</sup>** day of **July** 2013.

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**B. THURANIRA JADEN**

**JUDGE**