



**Platinum Credit Limited v Robert Waweru (t/a Antique Auctioneer) & 2 others
(Civil Appeal E121 of 2024) [2025] KEHC 334 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E121 OF 2024
REA OUGO, J
JANUARY 23, 2025**

BETWEEN

PLATINUM CREDIT LIMITED APPELLANT

AND

ROBERT WAWERU (T/A ANTIQUE AUCTIONEER) 1ST RESPONDENT

NAFTALI AWINO OBAGE 2ND RESPONDENT

ENOSH OKOTH ODERA 3RD RESPONDENT

RULING

1. This ruling relates to the application dated 20th August 2024. The appellant/ applicant (the applicant) is seeking a stay of execution of the ruling and order in Bungoma CMC Misc Application No E157 of 2024 delivered on 15th August 2024 pending the hearing and determination of the appeal. The applicant also seeks that motor vehicle registration no. KDN 710M (the vehicle) be held in a neutral location, the Bungoma Police Station and/or the 1st Respondent's Storage Yard pending, the hearing and determination of the appeal.
2. The applicant through the 1st respondent at the lower court sought to repossess the motor vehicle after the 2nd respondent defaulted on his loans. The vehicle, according to the applicant had been used as collateral and registered in the joint names of the appellant and the 2nd respondent. The court granted the 1st respondent orders to break in and repossess the vehicle. According to the applicant, the court became functus officio. However, the 3rd respondent filed objector proceedings and through his application dated 17th July 2024 sought to have the vehicle released to him. The lower court's ruling of 5th July 2024 allowed the 3rd respondent's application. The applicant applied for the review of the court orders, which were dismissed by the court's ruling of 15th August 2024.



3. The applicant argues that the vehicle is the only known asset registered in the joint names of the 2nd respondent and the applicant as the financier may suffer irreparable harm if the same is disposed of. If a stay of execution is not granted, substantial loss may result to the applicant because once the vehicle is released to the 3rd respondent it may not be recoverable.
4. The application was opposed by the 2nd and 3rd respondent. I have considered their responses together with the oral submissions by the parties.

Analysis and Determination

5. The trial magistrate's ruling which is the subject of the appeal and the application dealt with two applications. The applicant's application dated 17/7/2024 sought the review of the court orders of 5/7/2024.
6. This application was dismissed and therefore there no stay can be granted in respect of the subordinate court's decision as it dismissed the application. No stay can be granted on negative orders.
7. However, the court also considered the application by the 3rd respondent seeking the following orders:
 1. Spent
 2. That there be mandatory orders to the decree-holder, its agents and or persons acting on its behalf to release Motor Vehicle Registration Number KDN Nissan X-trail, to the objector or his authorized agent.
 3. That there be restraining orders against the decree-holder from illegally/unlawfully restraining/holding the motor vehicle registration number KDN 710M Nissan X-Trail.
 4. That Backyard Storage where the vehicle is being held be ordered to immediately and unconditionally release the vehicle to the objector or his authorized agent.
 5. That failure to comply with order 4 then there be a break in and out orders against Backyard Storage.
 6. OCS Kisumu Central Police station to ensure compliance with the Court orders.
 7. That the costs of this application be met by the decree-holder.
8. The trial magistrate found that the application dated 15/7/2024 was merited and granted the orders sought.
9. The applicant has averred that the 2nd respondent obtained a loan facility from it and that he used the vehicle as collateral. This is a triable issue. The motor vehicle is according to the applicant is its only known asset and the applicant stands to suffer substantial loss.
10. The court in [RWW v EKW](#) [2019] eKLR, it was observed that:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”



11. In determining an application for a grant of stay of execution, the court must weigh the competing interests of both parties and strike a balance such that no party is exposed to suffer undue prejudice. The Court of Appeal in *Absalom Dova v Tarbo Transporters* (2013) eKLR stated:

“The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the Court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation...”

12. This Court in exercise of its discretion and in the interests of justice, grants the applicant an order for a stay of execution of the ruling and order in Bungoma CMC Misc Application No E157 of 2024 delivered on 15th August 2024 pending the hearing and determination of the appeal. The motor vehicle registration no. KDN 710M shall be held in a neutral location, a storage yard within Bungoma County or a place to be agreed upon by the parties. The 3rd respondent shall surrender the vehicle within 7 days from the date of this Ruling to the said yard. The applicant will bear the storage charges costs. The parties or their agents shall not interfere with the vehicle in any manner whatsoever pending the hearing and determination of the appeal.
13. The applicant shall ensure that the Record of Appeal is filed and served within 30 days from the day of this Ruling. Mention before the Deputy Registrar shall be immediately after the 30 days to confirm compliance and further orders on when the High Court will give directions on the hearing of the appeal. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 23RD DAY OF JANUARY 2025.

R.E. OUGO

JUDGE

In the presence of:

Mr. Mbetera -For the Appellant/ Applicant

1st Respondent - Absent

Mr. Ateng -For the 2nd Respondent

Mr. Apollo - For the 3rd Respondent

Wilkister -C/A

