



REPUBLIC OF KENYA



**Angwenyi & another v Karagai (Civil Miscellaneous E966 of 2024)
[2025] KEHC 4746 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS E966 OF 2024

TW CHERERE, J

MARCH 6, 2025

BETWEEN

PETERSON MATONDA ANGWENYI 1ST APPLICANT

EDWIN NYANCHWA OCHOKI 2ND APPLICANT

AND

LINDA KARAGAI RESPONDENT

RULING

1. The court record reveals that Applicants' Motor Vehicle KCZ 549 Y was attached in execution of a lawful decree issued in case MCCC E 11915 of 2021, where judgment was entered on 15th February 2024, for the Respondent against the Applicants for the sum of KES. 1,106,924.
2. Subsequently, the Applicants filed the motion dated 22nd October 2024 seeking:
 1. Leave to appeal out of time,
 2. Stay of execution of the judgment,
 3. Stay of attachment and sale of motor vehicle KCZ 549 Y,
 4. The unconditional release of the motor vehicle KCZ 549 Y.
3. By a ruling dated 13th November 2024, the court finding that the application dated 22nd October 2024 was not opposed, issued orders for:
 1. Leave to file an appeal out of time
 2. Unconditional release of motor vehicle KCZ 549 Y



4. The orders in the ruling delivered on 13th November 2024 prompted the Respondent to file the application dated 21st November 2024, seeking the following orders:
 1. Stay of the order for the unconditional release of Motor Vehicle KCZ 549 Y issued by this court on 13th November 2024.
 2. An opportunity to be heard on the Applicants' notice of motion dated 22nd October 2024
5. The application is grounded on Order 22 Rule 22, Order 46 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules, and Section 3, 3A and 100 of the [Civil Procedure Act](#).
6. The Applicants, though served, did not file any response to the application dated 21st November 2024.

Issues for Determination:

7. Having considered the application, I have identified the issues for determination as follows:
 1. Whether the Respondent has made out a case for the stay of the order for the unconditional release of motor vehicle KCZ 549 Y.
 2. Whether the respondent is entitled to an opportunity to be heard on the notice of motion dated 22nd October 2024.
8. The Respondent seeks a stay of the court's order for the unconditional release of the motor KCZ 549 Y, claiming that the release would cause substantial loss since the decretal sum remains unpaid.
9. Order 22 Rule 22 of the Civil Procedure Rules allows the court to stay or suspend the execution of a decree or order, and for the stay to be granted, the Applicant must demonstrate substantial loss.
10. In *Kenya Shell Limited v. Kobil Petroleum Limited* [2006] eKLR, the Court of Appeal emphasized that substantial loss is a key factor for the grant of a stay and must be shown to be real and tangible, not speculative. The applicant must show that if the order is not stayed, they will suffer a significant, irreversible loss that is not easily compensable.
11. Motor vehicle KCZ 549 Y was lawfully attached in execution of a decree to recover a decretal sum of KES 1,106,924. The Respondent has demonstrated that releasing the motor vehicle unconditionally might have the effect of frustrating their ability to recover the judgment debt, as it is likely the primary asset for this purpose.
12. The unconditional release of the vehicle may render the judgment unenforceable and this would no doubt cause substantial loss to the Respondent.
13. The initial ruling on 13th November 2024 was issued ex parte due to non-opposition. The Respondent's application also seeks an opportunity to be heard on the Applicants' motion dated 22nd October 2024. It is the Respondent's position that they did not respond to the Applicants' motion before the court issued its ruling on 13th November 2024 but had subsequently filed a replying affidavit dated 11th November 2024 in opposition to the Applicant's motion.
14. I have looked at the replying affidavit dated 11th November 2024 and I find that it raises an arguable opposition to the Applicants' motion dated 22nd October 2024.
15. The right to be heard as protected under Article 50 of [the Constitution](#) is an inalienable right, and allowing the Respondent to be heard aligns with the principles of natural justice. The rules of natural justice "audi alteram partem", hear the other party, require that no man/woman may be condemned



unheard. (See *Msagha v. Chief Justice & 7 Others* Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553).

16. Based on the above analysis, the Respondent's application dated 21st November 2024 is allowed on the following terms:

1. The order dated 13th November 2024 for unconditional release of motor vehicle KCZ 549 Y to the Applicants is stayed pending the interpartes hearing and determination of the Applicants' motion dated 22nd October 2024
2. The application dated 22nd October 2024 shall be heard by way of affidavit evidence
3. Respondent shall bear their own costs of the application

It is so ordered.

DELIVERED AT NAIROBI THIS 06TH DAY OF MARCH 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicants - Ms. Bor for Kimondo, Gachoka & Co. Advocates

For Respondent - Mr. Kiptanui for Waiganjo Wachira & Co. Advocates

