



REPUBLIC OF KENYA



KENYA LAW
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**Darson Trading Limited v Njoroge & 2 others (Civil Appeal
E1505 of 2024) [2025] KEHC 12214 (KLR) (Civ) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12214 (KLR)

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

CIVIL

CIVIL APPEAL E1505 OF 2024

TW CHERERE, J

MAY 22, 2025

BETWEEN

DARSON TRADING LIMITED APPELLANT

AND

JANE MUTHONI NJOROGE 1ST RESPONDENT

EVANS OMARIBA MOMANYI 2ND RESPONDENT

UDDIN MIJBAH 3RD RESPONDENT

RULING

“The judicial process is not a revolving door through which parties may repeatedly pass with the same grievances, merely dressed in new garments.

1. Before the Court is a Notice of Motion dated 11th May 2025 brought pursuant to Article 159(2)(d) of the *Constitution*, sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, and Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*. The Appellant seeks the following reliefs:
 1. Stay of execution of the judgment delivered on 16th December 2024
 2. Leave to deposit half of the decretal sum in court
 3. Release of the motor vehicle attached by Kinyua & Co. Auctioneers to its registered owner;
 4. Costs of the application.
2. The application is supported by an affidavit sworn on 08th May 2025 by Nicholus Ngoli Inyangala, the Appellant’s Sales and Operations Manager. The Appellant avers that it is ready and willing to comply with the terms of a consent order recorded on 10th March 2025 but alleges that its compliance was



hindered by logistical challenges in opening the joint interest-earning account, including what it claims was the refusal by the Respondent's counsel to sign the account opening forms.

3. The 1st Respondent opposed the application through a replying affidavit sworn on 13th May 2025. The Respondent contends, inter alia, that:
 1. The application is *res judicata* and an abuse of the court process;
 2. The subject motor vehicle has already been sold by public auction as evidenced by a memorandum of sale dated 22nd April 2025;
 3. The application has been overtaken by events; and
 4. The Appellant never made any formal approach or attempt to open the interest-earning account.
4. The Appellant, in its further affidavit sworn on 19th May 2025, denies that any of its motor vehicles were sold and maintains that the auction process is contested by the registered owner of the attached motor vehicle who has since filed objection proceedings pursuant to Order 22 Rule 51 of the [Civil Procedure Rules](#).

Issue for Determination

5. I have considered the application dated 11th May 2025 and determined the issues for determination as:
 1. Whether the present application is *res judicata*;
 2. Whether the Court should order the release of the motor vehicle attached by Kinyua & Co. Auctioneers to its registered owner.

Analysis

6. A brief restatement of the history of the matter is necessary to contextualise the issues raised herein.
7. The present application is the third brought by the Appellant seeking stay of execution of the judgment delivered on 16th December 2024. It is worth repeating that on 10th March 2025, a consent order was recorded between the parties granting a conditional stay of execution on terms that the Appellant would deposit half of the decretal sum in an interest-earning account in the joint names of counsel. The Appellant failed to comply with those terms within the prescribed time. On 08th April 2025, this Court declined to extend time for compliance with the consent order, having found that the reason advanced, chiefly financial hardship, was insufficient.
8. Shortly thereafter, the Appellant filed a second application dated 11th April 2025, seeking to stop the sale of its unregistered motor vehicle. That application was dismissed on 08th May 2025, with the Court finding that the Appellant had not complied with the consent order dated 10th March 2025.
9. The present application, filed on 11th May 2025, seeks once again to obtain a stay of execution, this time proposing an alternative mode of compliance, namely, depositing the decretal sum directly in court instead of a joint account. While framed differently, the application in substance seeks to reopen issues previously determined by the Court.
10. Given the procedural history, the Court must now consider whether this application is barred by the doctrine of *res judicata* or constitutes an abuse of the Court's process.



11. The principle of res judicata serves to bar parties from re-litigating matters that have already been heard and conclusively determined. It applies not only to suits but also to interlocutory applications. (See *ET v Attorney General & Another* [2012] KEHC 5506 (KLR).
12. In the instant case, the Appellant seeks a stay of execution of the judgment on alternative terms to those agreed in the consent order of 10th March 2025. The same issue, whether stay should be granted in light of the Appellant's failure to comply with that consent, was the subject of the application dismissed on 08th April 2025. A subsequent application dated 11th April 2025, also seeking to avert execution, was dismissed on 08th May 2025.
13. The Appellant now alleges, for the first time, that its failure to comply arose from difficulties in opening the joint account. However, no documentary evidence has been provided to support this claim, and no request for guidance or extension has previously been made on that basis. This explanation is therefore not only unsubstantiated but also amounts to a matter that could and should have been raised earlier.
14. The Respondent contends that the present application is barred by the doctrine of res judicata, as the issues it raises were either directly determined or ought to have been raised in the two prior applications already adjudicated by this Court.
15. As held in the seminal case of *Henderson v Henderson* (1843) 67 ER 313, and reaffirmed by the Court of Appeal in *John Florence Maritime Services Ltd & Another v Cabinet Secretary for Transport & Infrastructure & 3 Others* [2015] KECA 472 (KLR), the doctrine bars not only re-litigation of concluded issues, but also the raising of matters which, with reasonable diligence, could and ought to have been brought forward in the earlier suit. The Court in *John Florence* was emphatic that:

“Res judicata applies to both issues that were raised and those that could have been raised with reasonable diligence.”
16. Applying this principle to the present case, it is evident that the Appellant is attempting to reopen the issue of stay of execution, which was conclusively addressed in this Court's ruling of 08th April 2025. The proposal to deposit the decretal sum in court, rather than in a joint account, does not amount to a new issue but is merely a variation of the same relief previously sought and declined. The application is devoid of any new evidence or supervening circumstances that would warrant a departure from the Court's earlier determination.
17. This Court is duty-bound to uphold the finality of litigation and the sanctity of its own processes. Permitting a party to re-agitate matters already adjudicated, under the guise of a modified prayer, would not only offend the doctrine of res judicata, but would also erode judicial authority and encourage a cycle of perpetual litigation. The integrity of judicial decisions demands that parties bring forth their entire case at once, and not in instalments. The present application, in so far as it reintroduces issues already determined, must therefore fail.
18. The Appellant further seeks the release of a motor vehicle attached by Kinyua & Co. Auctioneers.
19. To begin with, the Appellant concedes that it does not own the motor vehicle in question. On the contrary, the Respondent has placed before the Court a further affidavit confirming that the registered owner of the vehicle has instituted objection proceedings pursuant to Order 22 Rule 51 of the *Civil Procedure Rules*, which are currently pending before the executing court.
20. In light of the ongoing objection proceedings, it would be improper for this Court to intervene. The law reserves to the executing court the jurisdiction to determine the validity of attachments and the



rights of third parties in execution. To grant the relief sought would amount to usurping the authority of the executing court and rendering its processes nugatory.

21. Further, even assuming for argument's sake that the vehicle belonged to the Appellant, the Court would still be disinclined to interfere with what appears to be a lawful execution of a valid decree. The Appellant has not demonstrated any irregularity in the manner of attachment or any legal basis for this Court to intervene at the appellate stage.
22. The upshot is that the Appellant lacks locus standi to seek the release of a vehicle it does not own, and in any event, the matter lies squarely within the purview of the executing court where appropriate proceedings have already been commenced.
23. From the foregoing analysis, I find that the Notice of Motion dated 11th May 2025 is devoid of merit and it is dismissed with costs to the 1st Respondent.

DELIVERED AT NAIROBI THIS 22ND DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellant - Mr. Osoro for Osoro Juma & Co. Advocates

For 1st Respondent - Mr. Gomba for Charles Gomba & Co. Advocates

For 2nd Respondent - N/A for Kimondo Gachoka & Co. Advocates

For 3rd Respondent - N/A

