



**Darson Trading Limited v Njoroge & 2 others (Civil Appeal
E1505 of 2024) [2025] KEHC 12215 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E1505 OF 2024**

TW CHERERE, J

MAY 8, 2025

BETWEEN

DARSON TRADING LIMITED APPELLANT

AND

JANE MUTHONI NJOROGE 1ST RESPONDENT

EVANS OMARIBA MOMANYI 2ND RESPONDENT

UDDIN MIJBAH 3RD RESPONDENT

RULING

“Court orders are not invitations but commands. When conditions are set and ignored, the door to equity closes—not in malice, but in favour of finality.”

1. Before me is the Appellant’s chamber summons dated 11th April 2025, brought under Section 3A of the *Civil Procedure Act*. The Appellant seeks a stay of sale of an unregistered motor vehicle attached pursuant to execution proceedings commenced by the Respondent.
2. The application is supported by an affidavit sworn by Mr. Osoro David, learned counsel for the Appellant. The grounds advanced are that:
 1. On 10th March 2025, the court granted a conditional stay of execution, requiring the Appellant to deposit half of the decretal sum;
 2. The Appellant is still willing to comply with the conditions set;
 3. The Respondent has attached the Appellant’s unregistered motor vehicle; and
 4. The Appellant stands to suffer great loss and damage if the sale proceeds.



3. The 1st Respondent opposed the application through a replying affidavit sworn on 23rd April 2025. The Respondent contends that the conditional stay of execution lapsed on 09th April 2025, due to non-compliance by the Appellant, and that she was lawfully entitled to proceed with execution of the decree issued in her favour.

Issues for Determination

4. From the affidavit evidence on record, the following issues arise for determination:
 1. Whether the Appellant has established a basis for grant of stay of execution beyond the conditional stay earlier granted.
 2. Whether the Respondent's execution is lawful.

Analysis and Determination

1) Whether the Appellant has established a basis for grant of stay of execution

5. The grant of stay of execution pending appeal is discretionary and must be exercised judiciously and upon sufficient cause being shown (See *Vishram Ravji Halai & another v Thornton & Turpin* (Civil Appeal 15 of 1990) [1990] eKLR).
6. In this case, the conditional stay granted by the court on 10th March 2025 lapsed when the Appellant failed to comply by 09th April 2025. The Appellant has not shown sufficient cause to warrant a fresh stay at this late stage. Mere willingness to comply after default cannot revive a lapsed stay. As the Court of Appeal aptly stated in *Industrial & Commercial Development Corporation v Mukenya Nairobi Milk* [2005] eKLR:

“Equity aids the vigilant and not the indolent. It was incumbent upon the applicant to comply with the conditions set by the court. The applicant cannot turn around and plead for more indulgence after ignoring the court's orders.”

(2) Whether the Respondent's execution is lawful

7. It is uncontested that the decree in favour of the Respondent remains valid, and that the Appellant failed to satisfy the conditions for stay within the stipulated period. With the lapse of the conditional stay, the Respondent was lawfully entitled to execute the decree and realize the fruits of her judgment. As emphasized by the Court of Appeal in *Kenya Commercial Bank Limited v Tamarind Meadows Limited & 7 Others* [2016] eKLR:

“The successful party is entitled to the fruits of his judgment, and the Court should not deny him that right except for good and sufficient cause. The court's discretion to grant a stay must be exercised in such a way as not to prevent the successful party from enjoying the fruits of his judgment without just cause.”

8. In the absence of a subsisting stay order and given the Appellant's non-compliance, the Respondent's execution is both lawful and proper.
9. In view of the foregoing, I find no merit in the Appellant's chamber summons dated 11th April 2025. The application is accordingly dismissed with costs to the 1st Respondent.
10. This matter shall be mentioned before the Deputy Registrar on 10th June 2025 to confirm the filing of the record of appeal.



DELIVERED AT NAIROBI THIS 08TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Nyambala

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

