



**Kenya Power & Lighting Company Limited v M'Mburugu; Ikiba (Interested Party)
(Civil Appeal 201 of 2024) [2025] KEHC 6021 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 201 OF 2024
HM NYAGA, J
MAY 8, 2025**

BETWEEN

KENYA POWER & LIGHTING COMPANY LIMITED APPELLANT

AND

DAVID GICHURU M'MBURUGU RESPONDENT

AND

FRANCIS K IKIBA INTERESTED PARTY

RULING

1. The matter for determination is the application dated 22nd January, 2025, which seeks the following orders:-
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That this honourable court be pleased to order a stay of execution of the ruling/order delivered/dated 19th December, 2024 pending the hearing and determination of the intended appeal
 - e. That the costs be in cause
2. The application is propped by, the grounds, set out on the face of it and Is supported by the applicant's affidavit sworn on even date.
3. In a nutshell, the applicant's case is that he is dissatisfied with the ruling delivered by this court on 19th December, 2024 and has lodged an appeal.



4. That he is apprehensive that, the 1st Respondent may proceed with the execution of the said ruling and he stands to suffer, irreparable damage if the orders are not granted. That the intended appeal has a high probability of success. That he is ready to abide by any conditions that the court may deem fit.
5. In response, the appellant/respondent filed a replying affidavit sworn by Michael Ochieng on 14th February, 2025.
6. In a nutshell, it is deponed that the issues adduced in the application were raised in its response to the respondents, application dated 14th October, 2024, which culminated in the ruling delivered on 19th December 2024. That the Law favours finality of ruling unless compelling reasons, justify reconsideration, and in this case, one finds reasons have been adduced.
7. It is further deponed that the applicant does not stand to suffer any harm, as the decretal sum, the sum he paid is being retained by the auctioneer. That the application is time barred some orders of the court have already been implemented, including the opening of the account. That the same prayed are sought on appeal and thus it would only be proper for the said orders to be ought in an appeal, in order to avoid the court embarrassing itself in issuing contradicting orders.
8. When the application came up for directions, the court directed the auctioneer, Isaac Gitonga Ringera trading as Viewline Auctioneer needs to respond to the application and provide details of the decree(s) he was executing. Proof of receipt of payment from the applicant herein and proof of any disbursement thereof. The said auctioneer then filed his affidavit sworn on 17th February, 2025.
9. The auctioneer averred that he received two decrees and warrants of attachment and sale in respect to:-
 - a. Meru Small Claims Court Case NO. 147 of 2024
 - b. Maua Civil Misc. App. No. E013 of 2023
10. That through his agents, he proceeded to proclaim motor vehicle registration number KBT 239W belonging to the appellant herein. That a valuation of the said vehicle was conducted, the sale advertised and was conducted on 3rd September, 2024. That the applicant was the highest bidder for a sum of Ksh. 1,800,000/= and at the fall of the hammer, he was declared as the purchaser. That upon the sale, the applicant transferred the sum of Ksh. 1,800,000/= to him and he wrote a release letter to the storage yard to release the vehicle to the applicant.
11. The auctioneer further states that out of the sum realized in the sale, the same were utilized as follows:
 - a. Ksh. 625,282/= was forwarded to Gikonyo and Ngugi Advocates in settlement of the decree in Maua CM MISC E013 of 2023.
 - b. Ksh. 399,000/= was forwarded to Hiram Kirimi & Company Advocates intion factual of the decree in SCCC No. E147 of 2024.
 - c. Ksh. 524,114/= was utilized as auctioneers fees, storage charges and advertisement costs.
12. The auctioneer further states that he is still holding Ksh. 251,604 which he has been advised to hold as there is an appeal in this court. That he is ready to deposit the said sum as the court may direct.

Applicants Submissions

13. The applicant cited the provision of Order 42 Rule 6(2) of the Civil Procedure Rule which provides for stay of Execution pending appeal.



14. It is submitted that on substantial loss, unless the stay is granted, the motor vehicle that he had lawfully purchased will be retaken by the appellant herein. This, he submits, will render his intended appeal nugatory. In support of this submissions the applicant cited the following orders:-
 - a. Antony Ndonge – vs – African Virtual University (2015) eKLR
 - b. Kenya Airport Authority – vs- Motorball Welfare Society & Another.
15. On the time of filing the application, the applicant avers that the same has been filed without unreasonable delay.
16. On security, it is submitted that the applicant has clearly deponed that he is ready and willing to abide or comply with any order of the court.

Appellant/respondents submissions.

17. It is submitted that the applicant does not state specifically what loss he stands to suffer if the order are not granted. That being dissatisfied with the ruling in question does not entitle the applicant to the said orders and that the applicant can be absolutely re-imbursed his claim. It is further submitted that it is the appellant who stands to suffer more since the vehicle inn question is used to serve a huge populace around Meru region.
18. It is further submitted that the contested decretal sum was only KSh. 394,886 and the vehicle in question valued at over Ksh. 12 Million was disposed for a mere Ksh. 1.8Million.
19. To buttress, its submissions, the appellant/respondents cited the following decisions:-
 - a. Republic Vs- Kenya Urban Road Authority and 3 Others (Ex-Route Cytam Investment Management Limited (2018) eKLR Pius Kipchirchir
 - b. Gatirau Peter Munya – Vs- Dickson Mwenda Kithinji & 2 Others (2014) eKLR
 - c. Kenya Shell Limited -vs- Benjamin Karuga Kibiti & 2 Others (1986) eKLR
 - d. Samson M. N. Wambugu – vs- Kenya Commercial Bank Ltd 2015 eKLR
 - e. James Wangulwa & Another – vs Agnes Naliaka Keketo (2012) eKLR
 - f. Pous Kipchirchir Kogo – Vs- Frank Kimeli Tenai (2018) eKLR
 - g. The Registered Trustee of the Kenya Red Cross Society – vs Nicholas Kiptoo Arap Salat (2014) eKLR
20. The respondent submitted that on the strength of the above cases, the applicant has failed to surmount the misplaced on how to warrant the orders sought.
21. The respondent urged the court to dismiss the application.

Analysis & Determination

Vide my ruling delivered on 19th December, 2024, I held as follows

- a. There shall be a stay of execution/transfer of the Motor vehicle KBT 239N pending hearing and determination of this appeal on condition that the applicant deposits the decretal sum if not paid into the joint account of the advocate of the applicant and respondent int eh next 20 days.



- b. Further, the auctioneer shall release the proceeds of the sale, less his costs to be agreed or taxed to the interested party within the next 30 days.
 - c. The applicant shall refund the difference between the sale proceeds and the refund to the interested party together with any additional expenses to the interested party within the next 14 days.
 - d. Upon compliance with the above orders the applicant may collect the motor vehicle which is to remain under the ward of the court.
 - e. The matter to be mentioned on a date that I shall give shortly to confirm compliance.
22. It is this ruling that the applicant, who avers that he was a lawful purchaser seeks a stay of. The applicant has to bring himself under the provisions of order 42 rule 6(2) of the Civil Procedure Rules which provide as follows:-
- XXXXX
- 23. The parties have correctly interpreted the said rule and provided relevant authorities on the matter.
 - 24. The first question to be answered is whether the applicant has established that he will suffer substantial loss if the stay is not granted.
 - 25. It is to be remembered that the applicant is not the owner of the motor vehicle in question. He is an alleged purchaser of the said vehicle in a public auction.
 - 26. In my view, the applicant loss cannot be said to be substantial because in my ruling of 19th December, 2024, I ordered the Auctioneer to pay him the balance of money held to the applicant. I also ordered that the appellant pays to the applicant the difference between the amount the appellant paid to purchase the vehicle together with any additional expenses.
 - 27. Thus, the applicant is fully covered for any loss he may suffer. Infact once, the orders are complied with the applicant stands to suffer no loss at all.
 - 28. On the other side the appellant, whose vehicle was seized pursuant to the two decrees of the lower court, stands to suffer greater loss. I am thus not satisfied that the applicant has established substantial loss. As was stated in Kenya Shell Limited -Vs- Benjamin Karuga Kibiro & 2 Others [Supra] the mere fact that a party is dissatisfied by a decision does not amount to sufficient grounds to grant a stay of execution.
 - 29. On the question of delay there is no doubt that the application was filed without undue delay. On the question of security, the applicant has stated that he is willing to abide by any order of the court.
 - 30. In the circumstance of the case herein, I don't think that the averment is sufficient. Is he saying that he is ready to compensate the appellant for the loss of the value of the motor vehicle, alleged to be Ksh. 12Million? There is no clarity on that issue.
 - 31. It has been reiterated that to succeed, an applicant must succeed on all three limbs under order 42 Rule 6(2) Civil Procedure Rules.
XXX (see the case of XXXXXXXX(.....))
 - 32. The applicant has only succeeded on one limb.
 - 33. For the foregoing reasons, I find that the application lacks merit and it is dismissed with costs.



34. That said, in compliance of the earlier orders, I direct that the Auctioneer, refunds the amount of Ksh. 251,604/= to the applicant within the next 14 days.
35. Further, in accordance with the orders of 19th December, 2024, the appellant is to re-imburse the applicant Ksh. 1,548,376 being the difference between the purchase price paid and the amount refunded by the auctioneer.
36. It will only be upon payment of the said sum by the appellant/respondent that is shall be allowed to collect the motor vehicle in question.

DATED, SIGNED & DELIVERED AT MERU THIS 8TH DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

