



**Ojwang v Nyamweya & another (Civil Appeal E026 of 2025)
[2025] KEHC 6131 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6131 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E026 OF 2025
RN NYAKUNDI, J
MAY 16, 2025**

BETWEEN

JACKSON CASTORE OJWANG APPELLANT

AND

KIRKLAND BISICHO NYAMWEYA 1ST RESPONDENT

MOMENTUM CREDIT LIMITED 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 12/02/2025, the Applicant seeks orders that:
 1. Spent.
 2. Spent.
 3. This Court be pleased to issue an injunction stopping the Respondents from repossessing, disposing off and/or selling the Applicant's motor vehicle registration number KCE 0X3F pending the hearing and determination of this appeal.
 4. Costs of this application be provided for.
2. The application is premised on the grounds therein and it is further supported by the Affidavit sworn by the Applicant on the same date.
3. The Applicant deponed that the ruling delivered by Hon. D. Mikoyan on 8/02/2025 was delivered in absence of his Advocate and that he is aggrieved by the said ruling as the trial Court determined the suit at an interlocutory stage. The Appellant has since proffered an appeal against the said ruling. The Applicant maintained that that the application herein was filed without delay despite the Magistrate failing to give Notice to his advocates on record on the date that he would deliver the ruling as he had adjourned the said ruling severally for reasons best known to him. The Applicant further deponed that



the ruling was brought to his attention after making an inquiry from the lower Court Civil Registry. The Applicant is apprehensive that the 2nd Respondent will make good her threat of taking possession of the subject motor vehicle registration number KCE 0X3F, which is the substratum of the main suit as the ownership of the same is contended. The Applicant maintained that unless the application herein is heard on priority basis then the subject of the main suit herein Eldoret Civil Suit No.523 of 2024; *Jackson Castroe Ojwang' Versus Kirkland Bisicho Nyamweya & Another*; will be sold by the 2nd Respondent rendering the suit nugatory. The Applicant further deposed that unless the matter herein is heard on priority basis and the orders herein granted, the Application, the Appeal and the lower Court suit will be rendered nugatory and as such, he will suffer financial distress as he has spent a huge amount of money improving the said motor vehicle to its current state thus subjecting him to economic distress and miscarriage of justice. The Applicant contended that the said motor vehicle was sold to him as a grounded project car and he has spent a substantial amount of money to bring it back to manufacturer's standards and that the same forms part of his tools of trade as an Advocate as he uses it for Court attendance. According to the Applicant, the Respondent will not be prejudiced in any way if the orders sought herein are granted as the said motor vehicle has been in his possession since January 2024 when he bought from the 1st Respondent. The Applicant contended that the agreed purchase price for the said motor vehicle was paid in full and that he has used the same amount to improve the said motor vehicle to road worthy status.

The Response.

4. The application herein is opposed by the Respondent vide the Replying Affidavit sworn by Sheila Imali Limisi, the Legal Officer of the 2nd Respondent, on 18/02/2025.
5. She deposed that vide a logbook loan application form dated 14/09/2023, the 1st Respondent sought and was granted a principal loan facility of Kshs.280,000/= by the 2nd Respondent to be secured by motor vehicle registration number KCE 0X3F, that the said loan was to be repaid in twenty four monthly instalments of Kshs.27,086/= by the 1st Respondent, that before the loan was disbursed, the 1st respondent availed the collateral for valuation and the 2nd Respondent fixed a tracking device on the collateral, that prior to the approval and disbursement of the loan, the 1st Respondent executed a security agreement that required that motor vehicle registration number KCE 0X3F be co-registered between himself and the 2nd Respondent to ensure that the 2nd Respondent's interest is secured.
6. She further deposed that the 2nd Respondent further advanced to the 1st Respondent an insurance premium finance (IPF) loan of Kshs.47,252/=, that the 1st Respondent's loan account fell into arrears, that the 1st Respondent failed to make payment of the loan instalments as demanded and as per the 2nd Respondent's loan collection process, the collateral became due for repossession and on 9/06/2024, the 2nd Respondent instructed auctioneers to repossess the collateral and on 13/06/2024, the auctioneers served the 1st Respondent with the proclamation notice, that on 1/07/2024, the Appellant obtained a Court order restraining the Respondents or their agents from repossessing the motor vehicle registration number KCE 0X3F, that the terms and conditions of the loan advanced to the 1st Respondent allows the 2nd Respondent to exercise its right to realize the collateral and recover any outstanding loan amount plus all costs including but not limited to loan charges and legal fees, that the 2nd Respondent was not privy or a party to the alleged motor vehicle sale agreement dated 4/01/2024 between the Appellant and the 1st Respondent therefore the terms of the said agreement does not affect its rights as far as the ownership of the collateral is concerned, that the Appellant has not provided sufficient grounds to warrant being granted an injunction restraining the 2nd Respondent (being a secured creditor) from repossessing motor vehicle registration number KCE 0X3F in the case of breach of the loan agreement by the 1st Respondent and that it is a fact that the 1st Respondent's



loan account is in arrears. According to the 2nd Respondent, the Appellant has not established a prima facie case against the 2nd Respondent with a high chance of success, that the Appellant has failed to demonstrate that the 2nd Respondent was privy or party to the motor vehicle sale agreement of the motor vehicle dated 4/01/2024 between himself and the 1st Respondent, that the Appellant has failed to demonstrate irreparable harm that cannot be compensated by an award of damages because when he willingly purchased the suit motor vehicle which is a loan security from the 1st Respondent, he knew the sale of the same was one of the consequences to follow in case of the 1st Respondent's breach of the terms of the loan repayment and the Repayment cannot claim irreparable harm as the value of the security (motor vehicle registration number KCE 0X3F) is known and illustrated in the valuation report by Eezy Valuers and Assessors.

7. None the parties filed submissions.

Determination.

8. Having appreciated the parties pleadings on record. I noted that granting the orders being sought at this interim stage are a kin to dispensing the appeal and thus cannot issue at this juncture.
9. Be as it may, from the pleadings on record it is evident that the Applicant claims ownership of the suit motor vehicle having purchased it from the 1st Respondent whereas the 2nd Respondent also claims the same motor vehicle as collateral for the loan it issued to the 1st Respondent. The 2nd Respondent has since issued a proclamation notice with regard to the said motor vehicle with a view of making good its security. Based on the material before me, I find that there is need to main the status quo pending the determination of the substantive appeal herein.
10. In the case of *Fatuma Abdi Jillo v Kuro Lengesen & another* [2021] eKLR. In *Republic Vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR, Odunga J. (as he then was) stated;

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...” In *TSS Spinning & Weaving; Company Ltd Vs Nic Bank Limited & another* [2020] e KLR, the unpacked the purpose of a status quo order as follows: “In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention. ‘In *Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Limited & another* [2020] e KLR, the purpose of a status quo order was explained as follows:“..... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot *Saifudeen Abdullahi & 4 Others* in Mombasa High Court Misc. Civil Cause No. 11 of 2012, described the nature of a status quo order as follows: “In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima



facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

11. In the end, I hereby order as follows;

- i. The appeal to be fast tracked and heard on priority basis within 45 days from the date hereof.
- ii. Status quo be maintained to the extent that the Applicant/Appellant shall remain in possession of motor vehicle registration number KCE 0X3F until the appeal is heard and determined as prayed in.
- iii. Each party shall bear their own costs.

Orders, accordingly.

DATED,SIGNED AND DELIVERED AT ELDORT THIS 16TH DAY OF MAY 2025

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R. NYAKUNDI

JUDGE

