



**Kamau v Njoroge & 4 others (Civil Appeal E356 of 2024)
[2025] KEHC 12348 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E356 OF 2024**

F WANGARI, J

JULY 17, 2025

BETWEEN

THOMAS NDEGWA KAMAU APPELLANT

AND

ANWAR MOHAMMED NJOROGE 1ST RESPONDENT

GLOBAL INTERNATIONAL LIMITED 2ND RESPONDENT

DIAMOND SHIPPING SERVICES LIMITED 3RD RESPONDENT

KENYA REVENUE AUTHORITY 4TH RESPONDENT

KENCONT CFS 5TH RESPONDENT

RULING

1. The Appellant/Applicant brought forth a Notice of Motion application dated 17/10/2024 under Certificate of Urgency pursuant to Articles 40, 47, 48, 50 (10), 159 (1), (2) & (3), and 165 of *the Constitution*, Sections 1A, 1B, 3A, 65 (1) & 75 (1)(h) of the *Civil Procedure Act*, Orders 42 Rule 6, 43 Rule 1 (x) and 51 of the Civil Procedure Rules, and all other enabling provisions of the law.
2. The Appellant/Applicant seeks for the following orders: -
 - a. Spent
 - b. That a stay of execution of the ruling of the Honourable J.B Kalo (CM) signed and delivered electronically on 9th day of October 2024, but only received on email by the Appellant's advocates on the 16th day of October 2024, (hereafter the impugned Ruling), and the consequential orders thereto be granted pending the full hearing and final determination of this Application and the Appeal hereto.



- c. That in the alternative, in the event the 1st Respondent herein has already acted on the import of the ruling, a mandatory injunction do issue compelling the 1st Respondent, his agents, employees servants an or representatives howsoever, to deposit in this noble court, the subject matter motor vehicles' (Mitsubishi Lancer Evo X GSRFQ360 on KEBS Certificate No. QISJ/TIL-RWI-XXXX51) means and or instruments of control, possession, and ownership, including the logbooks, registration certificates and or any transfer documents on the same, to be held in trust for the parties pending the full hearing and final determination of the Application and Appeal hereto.
 - d. That in addition to prayer 3 herein above, a mandatory injunction do issue to the National Transport and Safety Authority, restricting it from effecting a registration, and or transfer of the subject matter motor vehicle to the 1st Respondent, and or any other third parties to any transaction related to the subject matter motor vehicle, pending the full hearing and final determination of this Application and the Appeal hereto.
 - e. That any other orders do issue in the interest of substantive justice and in exercise of this Noble Court's inherent jurisdiction.
3. The application is premised on grounds on its face and the annexed Supporting Affidavit dated 17/10/2024 sworn by Thomas Ndegwa Kamau. The Applicant avers that when the matter came up for ruling, the trial court gave directions on 07/08/2024 that the ruling on the 1st Respondent's application dated 02/04/2024 for review of the judgment dated 28/03/2024 would be delivered via electronic mail, and or the case tracking system by 12/08/2024. That despite exerting due diligence to follow up on the said ruling, it was not until 16/10/2024 when the Appellant's advocates herein saw that the said ruling had been issued via email on 09/10/2024 at 1653 hours past close of business.
 4. The Appellant/Applicant stated that the ruling erroneously and unjustly allowed the 1st Respondent's application for review of the judgment date 28/03/2024, and premised on unjustifiable, irrational and or the wrongful application of legal principles. That the Appellant/Applicant instructed his advocates herein on record to make this application and lodge the appeal being reasonably apprehensive that the 1st Respondent may at any time extract orders from the said ruling and commence the process of obtaining the subject motor vehicle thereby depriving the Appellant/Applicant of ownership rights. That if the orders sought are not granted, the Appellant/Applicant will suffer substantial loss and prejudice as he stands to lose ownership rights in the subject motor vehicle Mitsubishi Lancer EVO X GSRFQ360 on KEBS Certificate No. QISJ/TIL-RW1-00XXXX.
 5. In response, the 1st Respondent filed a Replying Affidavit sworn on 22/10/2024 stating that the court delivered its ruling on 09/10/2024 on merit. That the Applicant is seeking to stay execution of the ruling delivered by the trial court as well as mandatory injunctive orders yet they have not demonstrated or given sufficient reason for the same. That there are no special circumstances demonstrated to warrant the grant of the orders sought and the application is only meant to deny and delay the 1st Respondent from enjoying fruits of justice. That the application does not meet the threshold for granting the orders sought as it is scandalous, frivolous and/or vexatious or otherwise an abuse of the court process.
 6. The application was canvassed by way of written submissions. Only the 1st Respondent who complied by filing the submissions dated 14/12/2024 (though indicated as 14/12/2021)

Analysis

7. Having perused the application, the Replying Affidavit and the submissions on record, the issues for determination are;



- a. Whether the application is merited for grant of the orders sought.
 - b. Who bears the costs
8. I have perused through the Record of Appeal which has already been filed in order to appreciate the genesis of this application. I have perused through the Judgment dated 28/03/2024 which was in favour of the Plaintiff, the Appellant/ Applicant in this matter, the Notice of Motion dated 02/04/2024 by the 4th Defendant, the 1st Respondent in this application seeking to review the above Judgment and the Ruling dated 09/10/2024 allowing the application for review declaring the 4th Defendant/ 1st Respondent the legal owner of the suit motor vehicle.
 9. Dissatisfied with the said Ruling, the Plaintiff/Appellant filed this appeal vide the Memorandum of Appeal dated 17/10/2024. Filed along with the Memorandum of Appeal is the Notice of Motion dated 17/10/2024 subject to this ruling. The Appellant/ Applicant did not file his written submissions. I have perused through the 1st Respondent's written submissions. The submissions are in respect to the appeal but not the application at hand. The same shall not be considered at this stage.
 10. The Applicant seeks to have stay of execution of the Ruling dated 09/10/2024. In the alternative, there be a mandatory injunction compelling the 1st Respondent, his agents, employees, servants or representatives to deposit the subject motor vehicle in court and its logbook, and to have NTSA restricted from effecting registration.
 11. On mandatory injunctions, the Court of Appeal in the case of Nation Media Group & 2 Others- vs- John Harun Mwau (2014) eKLR, stated as hereunder;

‘It is trite law that for an interlocutory mandatory injunction to issue an applicant must demonstrate existence of special circumstance. A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.’
 12. The Applicant has not shown any special circumstances that would warrant this court to issue a mandatory injunction at this stage. In the alternative, the Applicant sought to have the NTSA be restricted from effecting the transfer. Upon perusal of the Judgment, the Plaintiff/Appellant had entered into a sale of motor vehicle agreement with the 1st Defendant/ 2nd Respondent. Due to a payment dispute, the 1st Defendant/ 2nd Respondent sold the suit motor vehicle to the 4th Defendant/ 1st Respondent.
 13. Without touching on the issues raised in the appeal, I take into consideration that the 1st Respondent bought the vehicle from the 2nd Respondent. He was not privy to the contract between the Applicant and the 2nd Respondent. On the other hand, the interests of the Applicant ought to be put into consideration pending the outcome of the appeal, hence the need to restrict the registration of the transfer.
 14. The court therefore orders as hereunder;
 - a. The Notice of Motion Application dated 17/10/2024 succeeds only to the extent that no transfer of the suit vehicle shall be effected pending the hearing and determination of the appeal.
 - b. The application having been partially successful, each party to bear its own costs.



It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 17TH DAY OF JULY 2025

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HON. F. WANGARI

JUDGE

In the presence of: -

N/A by the Appellant/ Applicant

N/A by the 1st, 2nd, 3rd, and 4th Respondent

Mr. Kongere Advocate h/b for Mr. Karina Advocate for the 5th Respondent

Ms. Norah, Court Assistant

