



**Assets Recovery Agency v Njuguna; Interdunia Mombasa Limited  
 (Interested Party) (Civil Suit E029 of 2024) [2025] KEHC 12851 (KLR)  
 (Anti-Corruption and Economic Crimes) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12851 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 ANTI-CORRUPTION AND ECONOMIC CRIMES  
 CIVIL SUIT E029 OF 2024  
 BM MUSYOKI, J  
 SEPTEMBER 19, 2025**

**BETWEEN**

**ASSETS RECOVERY AGENCY ..... APPLICANT**

**AND**

**MORIS MAINA NJUGUNA ..... RESPONDENT**

**AND**

**INTERDUNIA MOMBASA LIMITED ..... INTERESTED PARTY**

**RULING**

1. The notice of motion before the court dated 4<sup>th</sup> June 2025 seeks orders of stay of execution of this court’s decree dated 2<sup>nd</sup> May 2025 pending hearing and determination of the respondent’s intended appeal. The same is supported by affidavit of the respondent sworn on the same date and opposed through a replying affidavit of Bedford Muriuki sworn on 30<sup>th</sup> June 2025.
2. The applicant avers that if the stay orders are not granted, he stands to suffer prejudice and substantial loss and the intended appeal may be rendered nugatory. The applicant avers that the respondent does not deserve the orders of the court because he failed to surrender motor vehicles registration numbers KDG 024L and KDB 762N as ordered by the court on 6<sup>th</sup> June 2024.
3. Applications for stay of execution pending appeal are governed by Order 42 Rule 6 of the Civil Procedure Rules. The Courts have settled the conditions that an applicant must satisfy to justify grant of such orders which are that the application must be made without unreasonable delay, the applicant must show that he will suffer substantial loss in the event that the application is not granted and lastly



the applicant must provide security for due performance of the decree. In addition to these conditions, Section 97 of the Proceeds of Crimes and Anti-Money Laundering Act provides that;

“Any preservation order and any order authorizing the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order under section 92(1) shall remain in force pending the outcome of any appeal against the decision concerned.”

4. This Section in my view qualifies the condition for due performance of the decree as it seeks to have the assets which are subject of the decree remain preserved pending the hearing and determination of the appeal. For such preservation orders to be said to subsist the status quo must remain that the assets in question remain in control of the court. This is a substantive Section of the law which this court is bound to enforce.
5. In this matter, the court preserved motor vehicles registration numbers KDG 024L and KDB 762N and ordered that the same and their log books and keys be surrendered to the applicant. The court has however been informed that the respondent did not comply with the order and remains in possession of the motor vehicles. The respondent has not rebutted the applicant's averments to that effect as he has neither filed any response to the replying affidavit nor any submissions. I do agree with the applicant that the respondent has come to court with unclean hands. A party who is in disobedience of court orders should not expect favours or discretionary orders from the same court whose orders it has disrespected.
6. Although the respondent, in my view, has satisfied the other two conditions for grant of orders of stay of execution pending appeal, this court holds the opinion that the grant of the orders in the current state of affairs would not play a balancing act. If I were to grant stay while the respondent still holds the vehicles, I would be making nonsense of the judgment of this court which is not the purposes for which courts grant stay pending appeal. An order for stay should be made in a manner that would take the interests of both parties into consideration such that if the judgment debtor were to succeed in its appeal, the subject matter would still be available to it and if it were to fail, the judgment creditor would not be prejudiced by possibility of dissipation of the subject matter.
7. In view of what I have stated above, I make the following orders;
  1. The respondent shall within seven (7) days from the date of this ruling surrender motor vehicles registration number KDG 024L and KDB 762N, their log books and keys to the applicant.
  2. Once the vehicles are so surrendered, they shall remain preserved and shall not be sold, transferred or interfered with until hearing and disposal of the intended appeal.
  3. If the respondent shall fail to surrender the motor vehicles as ordered, the order for stay shall be considered lifted without any further reference to this court.
  4. I make no orders as to costs/.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**B.M. MUSYOKI.**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Kandie for the applicant and Mr. Wanjala for the respondent.

