



REPUBLIC OF KENYA



**James & another v Ngure (Civil Appeal 2 of 2017)
[2025] KEHC 12799 (KLR) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 2 OF 2017
DO CHEPKWONY, J
SEPTEMBER 4, 2025**

BETWEEN

KIHUHA JAMES 1ST APPELLANT

PETER CHEGE MBITHI 2ND APPELLANT

AND

MARGARET NJERI NGURE RESPONDENT

(Being an Appeal from the Judgment and Decree of the Chief Magistrate's Court at Thika (Hon. J. W. Onchuru, Ag. Principal Magistrate) delivered on 5th November, 2014 in Thika Chief Magistrate's Court Civil Case No.129 of 2012)

RULING

1. This is a ruling in respect of a Notice of Motion application dated 21st May, 2024 in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. That the Firm of Maingi Kamau & Co. Advocates be granted leave to come on record for the Defendants/Applicant in lieu of the Judgment delivered on 30th November, 2023.
 - c. That there be a stay of execution in regard to the ruling delivered by this Honourable Court dated 12th April, 2024.
 - d. That the 2nd Appellant is hereby ordered to pay the Respondent the entire balance of the decretal sum.
 - e. That the costs of this application be provided for.



2. The application is based on the grounds set out on its face and reiterated in the Supporting Affidavit of Kihuha James, the Applicant herein, sworn on 7th May, 2024, wherein he holds that at the time of the accident he had already sold Motor Vehicle Registration Number KBA 740Z to the 2nd Appellant but had delayed in transferring the log book into his (2nd Appellant's) name. according to the Applicant, when the suit was filed, service was effected upon 2nd Appellant who forwarded the same to Directline Assurance Co. Ltd. He holds that he did not have any legal right of ownership in the motor vehicle and did not participate in the suit.
3. It is the Applicant's averment that 2nd Appellant informed him that Direct line Assurance Co Ltd paid the Respondent the decretal sum of Kshs. 3,000,000/= and he should therefore not be a party to this suit. He holds that the 2nd Appellant should be ordered to pay the Respondent the full decretal sum, otherwise he (the Applicant) stands to suffer irreparable loss and damage.
4. The Respondent opposed the application vide a Replying Affidavit by Margaret Njeri Ngure sworn on 21st June, 2024 wherein she avers that the 1st Appellant had Counsel representing him during trial and he filed a Defence, thus was aware of the conduct of the proceedings. It is the Respondent's case that the Judgment was delivered against the 1st and 2nd Applicants jointly and severally, hence the claim that he had already sold the motor vehicle is false. She holds that there is a valid Judgment against the 1st and 2nd Applicants and there is no stay of execution to prevent the respondent from realising the fruits of her Judgment rendering the application an attempt at misusing the court process, a result of which the application should be dismissed.

Submissions

5. The court directed the parties to canvass the application by way of written submissions and the record reflecting that the Applicant filed his submissions dated 9th September, 2024 while the Respondent filed hers dated 7th August, 2024.
6. To determine the Notice of Motion application dated 21st May, 2022, the court has carefully read through the respective affidavits and written submissions filed by the respective parties and finds that the main issue in contention is whether the court should grant stay of execution of the orders issued on 12th April, 2024.
7. A reading of the pleadings filed herein reveals that there was no contention on the prayer for the Firm of M/S Maingi Kamau & Co. Advocates being granted leave to come on record for the Defendant's/ Applicant's in lieu of the Judgment delivered on 30th November, 2023. This prayer is therefore unchallenged.
8. However, it is worth-noting that the Applicants second prayer is premised on the provisions under Order 42 Rule 6 of the Civil Procedure Rules which provides as follows:-

“...[Order 42, rule 6.] Stay in case of appeal.

2. No order for stay of execution shall be made under subrule (1) unless—
 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.



9. In line with this provision, the courts have settled on the following requirements as basis upon which orders for stay of execution can issue.

They are that:-

- a. The Applicant must approach the court timeously, unless there is a justifiable reason demonstrated for any delay.
 - b. The Applicant should demonstrate the likelihood of suffering substantial loss if the order is denied.
 - c. The Applicant must also furnish security for the due performance of the decree in the event the appeal does not succeed.
10. And by virtue of the words in the heading of Order 42 Rule 6 which reads “stay in case of appeal”, it only means that an Applicant must demonstrate that there is “a pending appeal”. In view of the condition set under Order 42 Rule 6 of the Civil Procedure Rules, it is worth noting that the Applicant’s main contention is that Directline Assurance Co. Ltd entered appearance and filed a defence on his behalf in the suit before the trial court whereby they paid a sum of Kshs.3,000,000/= as insurers of the 2nd Appellant when Judgment was rendered leaving the other expenses being costs and interest. That for this reason, the Applicant’s argument that he was not a party to the said suit and more so since he had no insurable interest in the suit motor Vehicle since he had already sold the same to the 2nd Appellant. In this court’s view, it is too late in the day for the Applicant to raise such defence as the same was not brought up at any stage of the trial and yet the Applicant and the 2nd Appellant were represented by the same

Firm of Advocates.

11. Also, it is worth noting that the accident took place on 31st March, 2009, and this application is dated 21st May, 2024, which is more than fifteen (15) years ago, and this period of delay has not been explained by the Applicant. For this reason, the court finds the application is indeed a delay tactic by the Applicant meant to delay or deny the Respondent from realising the fruits of her Judgment for far too long.
12. Consequentially, no justification has been established as to why execution should not proceed against the Applicant as the conditions set under Order 42 Rule 6 of the Civil Procedure Rules have been satisfied.
13. In the resultant, the Notice of Motion application dated 21st May, 2024 is found to be without merit and the following orders are hereby issued:-
 - a. The Firm of Maingi Kamau & Co. Advocates is hereby granted leave to come on record for the Defendant/ Applicant in lieu of the Judgment delivered on 30th November, 2023.
 - b. A stay of execution in regard to the ruling and orders delivered by this Honourable Court on 12th April, 2024 is hereby declined.
 - c. The Applicant to bear the costs of this application.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 4TH DAY OF SEPTEMBER 2025.

D. O. CHEPKWONY



JUDGE

In the presence of:

No appearance for and by Appellants/Applicants

M/S Matu counsel for Respondent

Court Assistant – Kinyua

