



REPUBLIC OF KENYA



KENYA LAW
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**Otieno v Omune (Civil Appeal E103 of 2023)
[2024] KEHC 880 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E103 OF 2023
KW KIARIE, J
FEBRUARY 6, 2024**

BETWEEN

EVANCE ONYANGO OTIENO APPELLANT

AND

BERYL KOTTONYA OMUNE RESPONDENT

RULING

1. Evance Onyango Otieno, the appellant/applicant, moved the court through a Notice of motion dated the 4th day of December 2023. The applicant is seeking the following orders:
 - a. That this court do certify this matter as urgent but hear it ex parte in the first instance. [Spent]
 - b. That pending hearing of this application inter-parties, this court be pleased to grant a temporary stay of execution of court order/ruling dated 29th November 2023; for the avoidance of doubt, conservatory orders maintaining the status quo in terms of possession, use and safe custody of Motor vehicle KCA 812R and KCB 242W and the public address subject to this suit be maintained to the applicant until this application is heard and concluded.
 - c. That after hearing this application, this court will be pleased to grant a temporary stay of execution of court orders/ruling dated 29th November 2023 for the avoidance of doubt, conservatory orders maintaining the status quo in terms of possession, use and safe custody of Motor vehicle KCA 812R and KCB 242W and the public address subject to this be maintained to the applicant until this appeal is heard and concluded.
 - d. That costs to abide by the cause of appeal.
2. The application was premised on the following grounds:
 - a. That the motor vehicle registration numbers KCA 812R and KCB 242W were registered in the applicant's name.



- b. That the trial court ordered the said motor vehicles to be deposited at Oyugis Police Station without any justification.
 - c. That the motor vehicles in issue are the applicant's tools of trade.
3. When the applicant was before the court on the 6th day of December 2023, he was ordered to serve the respondent for an inter partes hearing scheduled for 18th January 2024. On the appointed day, he had not served. His advocate sought two days to file and serve submissions. The ruling was reserved for delivery on February 6, 2024.
 4. When this ruling was written on January 30th, 2024, the respondent had not been served, and no submissions were filed. The orders sought cannot, therefore, be granted. This will disadvantage the respondent who was not served. The application is dismissed.

DELIVERED AND SIGNED AT HOMA BAY THIS 6TH DAY OF FEBRUARY 2024

KIARIE WAWERU KIARIE

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

