



**Otieno & 3 others v Bandari Football Club (Cause E078, E080, E077 & E079 of 2023 (Consolidated)) [2025] KEELRC 2576 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2576 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E078, E080, E077 & E079 OF 2023 (CONSOLIDATED)**

**M MBARŪ, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**KENNETH ONYACH OTIENO ..... 1<sup>ST</sup> CLAIMANT  
DANIEL MNYARO MSHAMBA ..... 2<sup>ND</sup> CLAIMANT  
DAVID KINGATUA NJUGUNI ..... 3<sup>RD</sup> CLAIMANT  
WILSON ODUOR OBUNGU ..... 4<sup>TH</sup> CLAIMANT**

**AND**

**BANDARI FOOTBALL CLUB ..... RESPONDENT**

**RULING**

1. The ruling herein consolidates Cause Nos. E080 of 2023, E077 of 2023, and E079 of 2023. The applications under these files, Cause No.E078 of 2023, will apply to all the consolidated files.
2. The objector filed an application dated 4 July 2025 supported by the Supporting Affidavit of Michael Sangoro, general manager legal services. The objector is seeking that the attachment and removal of its property by M/S M. N. Mwanik t/a Anfield Auctioneers in motor vehicle registration No. KDK 964P be returned. Further, that the claimants to compensate the Objector for the loss of use of its vehicle at Ksh.20,000 per day until the same is returned to the Objector. The claimants to pay the due costs.
3. Sangoro avers that the claimants, as decree holders, have executed against the property of the motor vehicle, the property of the objector and not the respondent. The objector was denied the use of the vehicle, which is used to ferry its employees, and has thus lost Ksh. 20,000 per day, which should be paid.
4. Pending the hearing and termination of the application, the motor vehicle No. KDK 964P was returned to the objector. However, the objector is claiming the loss incurred for the unlawful removal and attachment of its property. The decree holder should pay this.



5. The claimants submitted that the motor vehicle was returned following a court order. This compliance should be taken as adherence to the rule of law.
6. For the alleged loss of the user of motor vehicle KDK 964P by the Objector, this is a separate and distinct claim that should be addressed separately from these proceedings to allow the claimants a fair hearing to reply and be addressed on the merits. The claimants have made great effort to execute a lawful judgment herein and upon the court directions to return the subject vehicle, there was immediate compliance.

### **Determination**

7. Execution proceedings are lawful and legitimate. Upon the court decree, the warrants of attachment issued or Warrants of Sale issued are part of the judicial process to enforce its orders. The decree holder or *auctioneers act* as the agents of the court to secure lawful orders.
8. However, illegal, irregular and unlawful execution of a decree by any party against the property of a third party negates the very essence of execution proceedings as held in *Arisa v Kipkebe Limited; Ryce EA Limited (Objector) [2025] KEELRC 1468 (KLR)*. great diligence should be undertaken to execute within the law.
9. The objector has demonstrated ownership of motor vehicle No. KDK 964P this is not challenged. The attachment of this vehicle is irregular.
10. The objector is allowed under these proceedings to seek loss of user as held in *Misa M Auctioneers & another v Kariuki [2024] KEHC 11178 (KLR)*.
11. The objector submitted that it lost Ksh.20,000 per day for the time its motor vehicle was attached by the agents of the claimants and this should be paid for the entire time the same was removed from its use. Sangoro for the objector averred that the objector is a state corporation and the attached motor vehicle was ordinarily used to ferry the employees in their official duties. The attachment caused the objector loss and damage which should be recovered from the claimants and the auctioneers, as agents and the director being an officer of the court surcharged.
12. In the case of *Samuel Kariuki Nyangoti v Johaan Distelberger (2017) eKLR*, the applicant claimed loss of user of his matatu which had been involved in an accident, the Court of Appeal held;

The damages claimed by the appellant were in the nature of pecuniary loss which the law does not presume to be the direct, natural or probable consequence of the accident since it is subject of ascertainment by court through evidence and the application of the law relating to the measure of damages. In personal injury cases, the loss of business profits and loss of future earning capacity are usually in the nature of general damages. The loss of use of a profit-making chattel such as a lorry or matatu through an accident is similarly a claim in general damages. The standard of proof in such claims is on balance of probabilities and the principle of *restitutio in integrum* is applied in such cases.
13. Additionally, in *Peter Njuguna Joseph & Another v Anna Moraa (Civil Appeal No. 23 of 1991)*, the Court of Appeal assessed the loss of use of an immobilised matatu by estimating the net income and the period during which it should have been repaired, despite the absence of supporting documents.
14. In this case, the objector has asserted loss of use of Ksh.20,000 for 2 days. This is a state corporation, as Sangoro has contended in his Supporting Affidavit, any loss of use of Motor vehicle KDK 964P



would be easy to ascertain since by ferrying employees daily, the removal of such use ought to have been quantifiable. There is no indication that the loss was Ksh. 20,000 per day or anything at all.

15. The application dated 4 July 2025 is spent. Each party is to meet its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

