



Co-operative Bank of Kenya Limited v Osiero & 2 others; Nyambane & another (Objector); National Transport & Safety Authority & another (Interested Parties) (Commercial Appeal E096 of 2024) [2025] KEHC 14698 (KLR) (Commercial and Tax) (8 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E096 OF 2024**

MN MWANGI, J

OCTOBER 8, 2025

BETWEEN

THE CO-OPERATIVE BANK OF KENYA LIMITED APPLICANT

AND

MOSES OMBOGA OSIEMO 1ST RESPONDENT

LATEMA SACCO 2ND RESPONDENT

JEPHYS AUCTIONEERS 3RD RESPONDENT

AND

VICTOR CHWEYA NYAMBANE OBJECTOR

ABEDINEGO OKENYE ONGATA OBJECTOR

AND

NATIONAL TRANSPORT & SAFETY AUTHORITY INTERESTED PARTY

KANA GOLICHA DUBA INTERESTED PARTY

RULING

1. The applicant filed a Notice of Motion application dated 21st June 2024 brought under the provisions of Order 40, Order 42 Rule 6 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 81 of the Co-operatives *Societies Act*, Sections 1A, 1B, 3A & 79G of the *Civil Procedure Act*, Articles 25(c) & 159(2) of *the Constitution* of Kenya and all other enabling provisions of the law. The applicant prays for an order for stay of execution of the sale of motor vehicle registration No. KDD 188J, particularly restraining Messrs. Vintage Auctioneers from selling it and an order of interim injunction preventing



- the transfer, registration of interests, or registration of transfer over motor vehicles registration Nos. KDD 188J & KDN 041C without the applicant's consent, pending the hearing and determination of this appeal.
2. The applicant also sought a declaration that any purported sale or transfer of motor vehicles registration Nos. KDD 188J & KDN 041C without the applicant's consent is unlawful, null and void, and of no legal effect, an order allowing them to take possession of motor vehicles registration Nos. KDD 188J & KDN 041C based on their registered interests, pending the hearing and determination of this appeal, an order that the Memorandum of Appeal dated 16th April and filed on 18th April 2024 be deemed as being as properly on record and/or in the alternative, an order for extension of time to file and lodge the Memorandum of Appeal.
 3. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Anthony Motanya, the applicant's Business Banker in the Tom Mboya branch. Mr. Motanya averred that the 1st respondent obtained a warrant of attachment dated 26th October 2023, leading to a proclamation by Vintage Auctioneers against the two subject motor vehicles, which had been used as security for Asset Finance Facilities granted to the 2nd respondent. He averred that motor vehicle registration No. KDD 188J was used to secure Kshs.35,000,000/= and motor vehicle registration No. KDN 041C was used to secure Kshs.5,088,000/=. He stated that the said motor vehicles are jointly registered in the names of the applicant and the 2nd respondent.
 4. Mr. Motanya stated that the applicant maintained a legal and beneficial interest in the subject motor vehicles and had filed an objection to their attachment, but the Tribunal dismissed the objection on 7th March 2024 on grounds that the Bank had not proved its interest. He further stated that the applicant filed a Memorandum of Appeal 10 days late due to delays in receiving the Tribunal's Ruling but asserted that the delay is explainable and not inordinate. He deposed that motor vehicle registration No. KDN 041C was sold by public auction on 12th April 2024, whereas motor vehicle registration No. KDD 188J was advertised for sale on 19th April 2024, but the sale did not go through due to lack of bidders.
 5. Mr. Motanya asserted that the 2nd interested party claims to have bought motor vehicle registration No. KDN 041C and has petitioned for forced transfer, despite the applicant being a registered co-owner. He averred that the applicant fears that transfers may proceed without its consent, defeating its interest and rendering this appeal nugatory. He contended that unless the instant application is allowed, the applicant will suffer substantial and irreparable loss, as it was not a judgment debtor and its registered interests predate the decree. He further averred that the applicant is willing to deposit security as the Court may order and/or direct and asserted that the instant application is necessary to preserve the subject matter of this appeal.
 6. In opposition to the application herein, the 1st respondent filed a replying affidavit sworn on 5th July 2024 by Mr. Moses Omboga Osiemo, the 1st respondent herein. Mr. Osiemo averred that the instant application is procedurally flawed as it seeks orders against the 1st & 2nd interested parties who are not formally part of the appeal and have not been joined properly. Further, the Memorandum of appeal dated 16th April 2024 was filed out of time without leave of Court. He stated that the instant application having been filed over three months after the Ruling is an afterthought meant to sanitize an incompetent appeal. He contended that the applicant failed to explain its delay in appealing or seeking leave to appeal and instead filed multiple applications across different forums without progress, and that the applications dated 27th March & 17th April 2024 filed in HCCOMM Misc No. E273 of 2024 were later withdrawn with no reasons being adduced.



7. Mr. Osiemo averred that the Tribunal's Ruling delivered on 7th March 2024 lawfully dismissed the applicant's objection due to lack of sufficient proof of interest in the subject motor vehicles, despite the existence of the facility letters and security agreements. He asserted that the delay in lodging an appeal against the Tribunal's Ruling and in filing the instant application demonstrates indolence and abuse of the Court process. He further averred that the subject motor vehicles were sold to 3rd parties who acted in good faith via lawful public auctions on 12th & 19th April 2024, respectively, and that the subject matter of this appeal no longer exists as ownership has been lawfully transferred.
8. Mr. Osiemo contended that the applicant still holds other secured motor vehicles including motor vehicles registration Nos. KDD 143K, KDD 170J, KDD 177J & KDD 262J under the same loan facility, and as such, it has adequate collateral. He deponed that the applicant's interest if any, is quantifiable in monetary terms, thus in the event that the applicant's appeal is successful, damages would suffice as adequate compensation. He contended that no irreparable harm has been demonstrated, and that the balance of convenience tilts in favour of third-party purchasers who should not be prejudiced by the applicant's delay and procedural failings. Additionally, he stated that granting the orders being sought herein now would undermine the integrity of the auction process and create legal uncertainty for third-party buyers.
9. The 2nd interested party filed a Notice of Preliminary Objection dated 25th October 2024 in opposition to the application herein, raising the following grounds -
 - i. The 2nd interested party is a stranger to both the applicant's application and the substantive appeal, as he was never properly joined in these proceedings nor in the previous proceedings before the Co-operative Tribunal from which this appeal arises. As such, this Honorable Court lacks jurisdiction to entertain, hear, or determine any issues in the application dated 21st June 2024 that touch on the 2nd interested party;
 - ii. The 2nd interested party, not having been joined in the main appeal and being a stranger to the appeal proceedings, cannot be subjected to the application dated 21st June 2024. The said application seeks orders that would adversely affect the rights of the 2nd interested party without proper inclusion in the appeal, which is procedurally improper and prejudicial;
 - iii. The applicant is estopped, pursuant to Section 120 of the *Evidence Act*, Cap 80, Laws of Kenya, from challenging the auction process, having failed to contest the Ruling within the prescribed time. By allowing the auction to proceed to its conclusion and the subsequent transfer of ownership, the applicant induced the 2nd interested party to rely on the validity of the auction process and purchase the suit motor vehicle registration number KDN 041C. Consequently, the applicant cannot now challenge the process or its outcome; and
 - iv. The applicant's application dated 21st June 2024 is therefore incompetent, frivolous, and an abuse of the Court process and thus (sic) a proper candidate for dismissal with costs to the 2nd interested party.
10. The 2nd interested party also filed a replying affidavit sworn on 25th October 2024 by Mr. Kana Golicha Duba, the 2nd interested party herein. Mr. Golicha averred that he is currently the registered owner of motor vehicle registration No. KDN 041C, having lawfully purchased it at Kshs.4,000,000/=, at a public auction held on 12th April 2024, conducted by Vintage Auctioneers under valid warrants of attachment and proclamation notices. He contended that he was not a party to the original Tribunal proceedings and only participated in the auction as a bona fide purchaser after conducting due



diligence. Further, that at the time of purchase, he had no notice of any ongoing disputes or claims over the vehicle.

11. Mr. Golicha stated that he has not been joined in the appeal proceedings, yet the application herein seeks orders that would adversely affect his rights without due process. He further stated that the instant application was filed after the auction had been concluded and the applicant has not provided valid justification for the delay. He contended that the applicant's procedural lapses or inaction should not prejudice the rights of an innocent third-party purchaser, who acted in good faith and followed the law. He asserted that reversing the sale would undermine the integrity of the judicial auction process and the principle of finality in execution proceedings.
12. The application herein was canvassed by way of written submissions. The applicant's submissions were filed on 25th November 2024 by the law firm of LJA Associates LLP, the 1st respondent's submissions were filed on 4th December 2024 by the law firm of Roba & Associates, while the 2nd interested party's submissions were also filed on 4th December 2024 by the law firm of Mwaura Benedict Njuguna & Company Advocates.
13. Mr. Chemoyo, learned Counsel for the applicant submitted that the applicant does not require leave to appeal from a decision of the Co-operative Tribunal to the High Court, because Section 81 of the *Co-operative Societies Act* grants parties an automatic right to appeal to the High Court. Additionally, that Order 43 Rule 1(k) of the Civil Procedure Rules, 2010 allows appeals against orders made pursuant to the provisions of Order 22 of the Civil Procedure Rules, which includes Objector Proceedings under Rule 51. Counsel stated that there has been a 10-day delay in the filing of an appeal against the Tribunal's Ruling, that was caused by late issuance of a certified copy of the said Ruling, which was requested for on 11th March and only received on 19th March 2024. He submitted that pursuant to the provisions of Section 81(1) of the *Co-operative Societies Act*, this Court has the power to extend the 30-day appeal period where there is sufficient cause.
14. Counsel contended that strict adherence to timelines without accounting for administrative delays would amount to injustice and possibly discrimination contrary to the provisions of Articles 27 & 48 of *the Constitution* of Kenya. He asserted that the applicant has not been indolent in pursuing this appeal since by 27th March 2024 it had already filed an application seeking orders for stay of execution, pending the determination of the intended appeal. Mr. Chemoyo submitted that the delay in filing this appeal is neither deliberate nor unreasonable and no prejudice will be suffered by the 1st respondent in the event that the instant application is allowed. Further, that the Memorandum of Appeal raises arguable legal issues deserving consideration by this Court.
15. Mr. Chemoyo referred to the Supreme Court case of *Trusted Society of Human Rights Alliance v Matemo & 5 others* [2014] KESC 32 (KLR) and stated that although the 1st & 2nd interested parties were not involved in the Tribunal's Objector proceedings, their presence is now necessary for the Court to fully and effectively determine the issues at hand. He cited the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, and submitted that the Court may on its own Motion add parties whose presence is essential for the just adjudication of the matter. He submitted that the interested parties have been duly notified and will suffer no prejudice if they are joined to these proceedings since their rights are directly affected by the outcome of the instant application. Further, that the 2nd interested party's objection to being joined is unjustified, as he admits to having purchased the suit motor vehicle which was jointly registered in the name of the applicant and the 2nd respondent.
16. Mr. Chemoyo referred to the case of *Tahmeed Coach Limited v Maburuki Mwaguta & Luvuno Chimera Mwachidudu (Suing Legal Representatives of the Estate of Mwanakombo Omari, Deceased) & 5 others* [2023] KEHC 21857 (KLR) and submitted that the interest of justice demands that stay



- of execution be granted to prevent prejudice to the applicant, who has a registered legal interest in the suit motor vehicles. He submitted that the said motor vehicles are jointly registered and secured under a legal charge, thus execution without considering this would negate lawful encumbrances. He stated that the sale of the said vehicles violates the principle that illegality cannot found a legal right. Counsel referred to the provisions of Order 21 Rule 41 of the Civil Procedure Rules, 2010, and asserted that in this case, the applicant's consent was not sought before selling the suit motor vehicles despite the fact that it is a joint owner. He submitted that the applicant risks losing its secured interest through an unlawful sale and it will have no remedy to recover its interest once the vehicles are sold.
17. Mr. Oginga, learned Counsel for the 1st respondent relied on the case of *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others* [1993] KEHC 100 (KLR) and submitted that this application is an attempt by the applicant to frustrate lawful execution and shield the judgment debtor from liability by claiming ownership of motor vehicle registration No. KDN 041C. He contended that though the applicant claims that it acquired ownership of the suit motor vehicles on 20th September 2023, the security agreements were executed on 29th September 2023, after the judgment and decree which the 1st respondent seeks to execute were issued.
 18. Counsel argued that since charges are registered after execution of security agreements, registration before execution of agreements is highly irregular, unexplained and raises serious doubts about authenticity and intent. Further, that the timing of the charge just one day before judgment suggests an intent to preempt and defeat the decree-holder's execution rights. Mr. Oginga relied on the Court of Appeal case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others (Nick Salat case)* [2014] KECA 782 (KLR) and submitted that the applicant having filed its Memorandum of Appeal on 16th April 2024 outside the statutory timelines and without leave of the Court violated established legal procedure. He further submitted that the instant application having been filed over two months after the filing the said Memorandum of Appeal is an afterthought and not a genuine attempt to comply with the legal process.
 19. Mr. Oginga contended that the suit motor vehicles were sold lawfully via public auction, thus disrupting the rights of third-party purchasers would undermine the finality and certainty of Court proceedings. He cited the case of *Shimoni Resort v Registrar of Titles & 5 others* [2016] eKLR, and argued that the applicant's delay in challenging the auction and its lack of evidence of irregularity render the instant application to having been overtaken by events and impractical. Counsel cited the case of *James Ndung'u Kero v Chief Land Registrar, Director Of Survey & Attorney General* [2022] KEELC 1446 (KLR) and submitted that the instant application is procedurally defective as it fails to meet the legal threshold for joining interested parties. He argued that the applicant neither sought leave of Court prior to joining the 1st & 2nd interested parties nor established their legal interest or prejudice. He expressed the view that their inclusion in these proceedings was improperly effected.
 20. The 2nd respondent submitted that the instant application is fatally defective for failing to meet the legal threshold for joinder of parties. He relied on the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA and argued that the 2nd interested party's presence in this suit is not necessary for the full adjudication of the issues herein. He argued that the 2nd respondent was not a party to the proceedings before the Tribunal and/or Appeal, hence he was improperly joined to this appeal contrary to the provisions of Section 19 of the *Civil Procedure Act* and Article 50 of *the Constitution* of Kenya.
 21. Counsel asserted that the 2nd respondent meets the requirements of a bona fide purchaser as was set out by the Court in the Ugandan case of *Katende v Haridas & Company Limited* [2008] 2 E.A cited by the Court in *Zebak Limited v Nadem Enterprises Limited* [2016] KEHC 4357 (KLR), since he



lawfully purchased motor vehicle registration No. KDN 041C in a public auction on 12th April 2024, in good faith and without knowledge of fraud. The 2nd respondent cited the case of *Mistri Amar Singh v Serwano Wofunira Kulubya* [1963] EA 408 and stated that the Torrens system protects titles acquired in good faith, and the integrity and finality of judicial sales must be upheld. He argued that the applicant's delay in challenging the sale of the suit motor vehicles activates estoppel under Section 120 of the *Evidence Act*.

Analysis and Determination.

22. I have considered the application herein, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavits by the 1st respondent and the 2nd interested party, as well as the Notice of Preliminary Objection filed by the 2nd interested party and the written submissions by Counsel for the applicant, the 1st respondent and the 2nd interested party. The issues that arise for determination are –
- i. Whether the 2nd interested party's Notice of Preliminary Objection is merited;
 - ii. Whether the interested parties were improperly joined to this appeal;
 - iii. Whether the time for filing an appeal from the Co-operative Tribunal's Ruling delivered on 7th March 2024 should be extended.
 - iv. Whether an order for stay of execution of the sale of motor vehicle registration No. KDD 188J should issue;
 - v. Whether an order of interim injunction preventing the transfer and registration of the suit motor vehicles without the applicant's consent should issue;
 - vi. Whether the sale and/or transfer of the subject motor vehicles without the applicant's consent should be declared null & void; and
 - vii. Whether the applicant should be allowed to take possession of the suit motor vehicles based on their registered interests.

Whether the 2nd interested party's Notice of Preliminary Objection is merited.

23. It is now well settled that in order for a Preliminary Objection to succeed, it should raise a pure point of law, it should be argued on the assumption that all the facts pleaded by the other side are correct, but it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. What constitutes a valid Preliminary Objection was considered by the Court of Appeal in the case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
24. Further, in the case of *Omondi v National Bank of Kenya Ltd & others* [2001] KLR 579; [2001] 1 EA 177, guidance was given on what Courts ought to consider in determining the validity of Preliminary Objections. It was stated as follows-

..... In determining (Preliminary Objections) the Court is perfectly at liberty to look at the pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters...What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion and therefore the contention that the suit is an abuse of the process of the Court for the reason that the defendant's costs in an earlier suit have not been paid is



not a true point of preliminary objection because to stay or not to stay a suit for such reason is not done ex debito justitiae (as of right) but as a matter of judicial discretion....

25. Upon perusal of the grounds set out in the 2nd interested party's Notice of Preliminary Objection, it is evident that they raise contentious issues of fact which require this Court to consider and evaluate evidence. The said Preliminary Objection does however not pass muster. The grounds and/or issues raised therein would be more appropriately determined on merits during the hearing of the instant application.
26. This Court finds that the 2nd interested party's Notice of Preliminary Objection dated 25th October 2024 is bereft of merits. It is hereby dismissed.

Whether the interested parties were improperly joined to this Appeal.

27. It is essential to clarify that the present application does not seek any orders for joinder of parties. It is undisputed that the interested parties were not part of the proceedings before the Co-operative Tribunal. The 2nd interested party has therefore contended that the instant application is fatally defective for failing to satisfy the legal requirements for joinder. This Court is however mindful of the provisions of Order 1 Rule 9 of the Civil Procedure Rules 2010, which provides that -

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

28. Further, pursuant to the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, this Court has the discretion, at any stage of the proceedings and either on its own Motion or upon application by a party, to order the removal of any party who has been improperly joined as a plaintiff or defendant. The Court may also direct that any person who ought to have been joined as a plaintiff or defendant, or whose participation is necessary for the complete and effective determination of all the issues in dispute, be added to the suit on such terms as it considers just.
29. The Court in the case of *Zephir Holdings Limited v Mimosa Plantations Limited, Jeremiah Matagarro & Ezekiel Misango Mutisya* [2014] KEHC 1981 (KLR), in addressing the question of whether non-joinder of parties can defeat a suit held as follows -

A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.

30. In this matter, the applicant included the interested parties as part of the appeal at the time of filing it. It is not contested that the 2nd interested party claims to have an interest in one of the subject motor vehicles namely, motor vehicle registration No. KDN 041C, purchased at a public auction. I am as such persuaded that the interested parties are necessary for the Court to fully and effectively adjudicate all the issues in dispute. Further, I find that the inclusion of the interested parties in these proceedings is unlikely to occasion them any prejudice or harm that cannot be compensated by an award of damages.



In my considered view, their participation in this appeal ensures that they are afforded an opportunity to safeguard any rights or interests they may have in the subject motor vehicles.

31. It is my finding that the appeal cannot be defeated or deemed to be fatally defective due to the joinder of the interested parties herein.

Whether the time for filing an appeal from the Co-operative Tribunal's Ruling delivered on 7th March 2024 should be extended.

32. Appeals from decisions of the Co-operative Tribunal to the High Court are provided for under Section 81 of the *Co-operative Societies Act* which states that-

1. Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court –

Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

2. Upon the hearing of an appeal under this section, the High Court may-
- a. confirm, set aside or vary the order in question;
 - b. remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
 - c. exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
 - d. make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.
3. The decision of the High court on any appeal shall be final.

33. From the above provisions, it is evident that appeals from the decisions of the Co-operative Tribunal to the High Court are as a matter of right. Moreover, under Section 81(1) of the *Co-operative Societies Act*, the High Court has the discretion to extend the time within which a dissatisfied party may file an appeal against the Tribunal's decision.

34. In determining whether or not to extend time for the applicant to file an appeal from the Ruling of the Co-operative Tribunal delivered on 7th March 2024, I am bound by the holding in the case of *Gitonga & 3 others v Independent Electoral & Boundaries Commission & 17 others* [2018] KESC 39 (KLR), where the Supreme Court of Kenya set out the guiding principles when it comes to extension of time, being the conditions which were also expressed in the *Nick Salat* case (supra) as follows -

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion:

1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. a party who seeks...extension of time has the burden of laying a basis to the satisfaction of the Court;



3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
4. where there is a reasonable [cause] for the delay, the delay should be explained to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents if the extension is granted;
6. whether the application has been brought without undue delay; and,
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.

35. In this instance, the Ruling of the Co-operative Tribunal which the applicant seeks to challenge was delivered on 7th March 2024. Under the provisions of Section 81(1) of the *Co-operative Societies Act*, the applicant was required to file an appeal against the said decisions, on or before 6th April 2024. The applicant did not comply with the said timeline and has now approached this Court seeking extension of time to lodge an appeal. The instant application was filed on 21st June 2024, approximately three and a half months after the Tribunal's Ruling. Notably, before the application herein was filed, the applicant attempted to file a Memorandum of Appeal dated 16th April 2024 on 18th April 2024, approximately forty two days after the delivery of the impugned Ruling.

36. Upon realizing that the Memorandum of Appeal had been filed out of time, the applicant subsequently filed the instant application approximately two (2) months later. As such, the applicant is required to provide a satisfactory and credible explanation for the delay in filing the appeal to justify the Court's exercise of discretion in extending time. In the often cited case of *Abdul Azizi Ngoma v Mungai Mathayo* [1976] Kenya LR 61, 62, the Court of Appeal held that –

We would like to state once again that this court's discretion to extend time under rule 4 only comes into existence after 'sufficient reason' for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.

37. The applicant contends that the delay in filing an appeal from the decision of the Co-operative Tribunal was due to late receipt of a certified copy of the Ruling which it received on 19th March 2024. The said date however still fell within the time frame within which the applicant could file its appeal against the impugned Ruling, this Court finds the explanation offered by the applicant to be insufficient. In the face of no other justifiable reasons having been provided, the delay in lodging an appeal from the impugned Ruling is deemed as being both inordinate and inexcusable.

38. This Court is bound by the Supreme Court's decision in the case of *Gitonga & 3 others v Independent Electoral & Boundaries Commission & 17 others* (supra) which affirmed that extension of time is not an automatic right but an equitable remedy granted at the Court's discretion and only to deserving parties. It is now well settled that equity aids the diligent, and not the indolent. In this case, the applicant only sought to appeal against the Co-operative Tribunal's Ruling after being prompted by the 1st respondent's move to attach and sell the subject motor vehicles. The applicant has neither demonstrated any proactive steps taken to lodge the said appeal within the requisite statutory period nor offered a satisfactory explanation for the delay. Accordingly, this Court finds the applicant guilty of laches and it is therefore not deserving of the equitable relief sought.



Whether an order for stay of execution of the sale of motor vehicle registration No. KDD 188J should issue.

39. The principles for granting stay of execution pending Appeal are stipulated under Order 42 Rule 6(1) & (2) of the Civil Procedure Rules, 2010 which provides as hereunder -
1. No appeal or second appeal shall operate as a stay of a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 2. No order for stay of execution shall be made under sub-rule (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.
40. It is evident that the applicant being aggrieved by the Ruling of the Co-operative Tribunal delivered on 7th March 2024, particularly, the dismissal of the applicant's objection application dated 31st October 2023, intends to challenge the said decision on appeal. The applicant now seeks an order for stay of execution of that Ruling pending the hearing and determination of the intended appeal.
41. Stay of execution can only be granted against a positive order or decree that is the subject of the appeal. Upon reviewing the Ruling delivered by the Co-operative Tribunal on 7th March 2024, it is clear that the Ruling did not issue any positive order, that is capable of being stayed, in respect to the applicant's objection application dated 31st October 2023. Instead, the said Tribunal dismissed the said application which sought inter alia, a declaration that the proclamation of attachment of the subject motor vehicles was illegal, irregular, and unlawful.
42. The above therefore means that the dismissal of the applicant's objection application dated 31st October 2023 did not give rise to any positive order that is capable of being stayed. In the case of *Western College of Arts and Applied Sciences v Oranga* [1976] KLR 63 at P. 66, the Court of Appeal when faced with a similar question made the following observation-
- In the instant case the High Court has not ordered any of the parties to do anything, or refrain from doing anything or to pay any sum. There is nothing arising out of the High Court judgment for this court, in an application for a stay, to enforce or restrain by injunction.
43. Having determined that the applicant is not deserving of an extension of time to file an appeal against the Co-operative Tribunal's Ruling delivered on 7th March 2024, it follows that an order for stay of execution cannot be granted in the absence of a valid appeal. Order 42 of the Civil Procedure Rules, 2010, clearly stipulates that stay orders are only applicable where a valid appeal has been filed.
44. In the circumstances, this Court finds that an order staying the sale of motor vehicle registration No. KDD 188J cannot issue.



Whether an order of interim injunction preventing the transfer and registration of the suit motor vehicles without the applicant's consent should issue.

45. Injunctions pending appeal are provided for under the provisions Order 42 Rule 6(6) of the Civil Procedure Rules, 2010, which states that –

Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

46. From the above provisions, it is evident that in order to properly invoke the provisions of Order 42 Rule 6(6) of the Civil Procedure Rules, 2010, an applicant must fully comply with the procedural requirements for instituting an appeal from a decision of either a Subordinate Court or a Tribunal. This ordinarily would entail demonstrating that an appeal has been duly filed against the said decision and that the appropriate appellate process which includes the filing of a Notice and/or Memorandum of Appeal has been followed

47. In this case however, this Court has already found that the applicant is not entitled to an order for extension of time to file an appeal against the Co-operative Tribunal's Ruling delivered on 7th March 2024. Consequently, in the absence of a valid appeal, an order for interim injunction to restrain the transfer and registration of the suit motor vehicles cannot be granted. Order 42 Rule 6(6) of the Civil Procedure Rules, 2010, expressly provides that injunctive orders under the said provision are only applicable where a valid appeal has been filed.

Whether the sale and/or transfer of the subject motor vehicles without the applicant's consent should be declared null & void.

48. It is not in contest that in the application dated 31st October 2023 filed before the Co-operative Tribunal, the applicant sought among other reliefs, a declaration that the proclamation of attachment of the subject motor vehicles was illegal, irregular, and unlawful. The Tribunal however dismissed that application in its Ruling delivered on 7th March 2024, thereby permitting the 2nd respondent to proceed with the proclamation, attachment, and eventual sale of the said motor vehicles.

49. In the circumstances and in the absence of any order setting aside, and/or varying the Co-operative Tribunal's Ruling delivered on 7th March 2024, this Court finds that the Tribunal's determination on the applicant's application dated 31st October 2023 remains valid, lawful, and enforceable. Consequently, this Court cannot declare in the sale and/or transfer of the subject motor vehicles carried out without the applicant's consent as being null and void.

Whether the applicant should be allowed to take possession of the suit motor vehicles based on their registered interests.

50. In light of the fact that the 2nd interested party has demonstrated that he lawfully acquired motor vehicle registration number KDN 041C at a public auction held on 12th April 2024, in good faith and without any knowledge of fraud, he qualifies as a bona fide purchaser for value without notice of fraud. Courts uphold the rights of such purchasers under the doctrine of finality of judicial sales, unless there is clear evidence of fraud or collusion, which has not been established in this matter.

51. Even if the applicant held a registered interest in the suit motor vehicles, such interest was extinguished by the said sale conducted pursuant to a Tribunal Order, which has not been set aside by a competent



Court. In the circumstances, this Court finds that allowing the applicant to repossess the suit motor vehicles would compromise the principle of finality in judicial proceedings, infringe upon the rights of a lawful purchaser and contravene established legal principles.

52. This Court holds that an order allowing the applicant to take possession of the suit motor vehicles based on its registered interests cannot issue.
53. The upshot is that the applicant's application dated 21st June 2024 and the 2nd interested party's Notice of Preliminary Objection dated 25th October 2024 are not merited. The application is dismissed with costs to the 1st respondent and the 2nd interested party. The 2nd interested party's Notice of Preliminary Objection is dismissed with costs to the applicant and the 1st respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

No appearance for the applicant

Ms Atieno holding brief for Mr. Oginga for the 1st respondent

No appearance for the 2nd & 3rd respondents

No appearance for the 1st & 2nd interested parties

No appearance for the 1st & 2nd objectors

Ms B. Wokabi - court Assistant.

