



**Crossport Motors Limited & another v Avanzar Financial  
Solutions Limited & 2 others (Commercial Case E393 of 2023)  
[2025] KEHC 15235 (KLR) (Commercial and Tax) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E393 OF 2023  
MN MWANGI, J  
OCTOBER 24, 2025**

**BETWEEN**

**CROSSPORT MOTORS LIMITED ..... 1<sup>ST</sup> APPLICANT**

**SAMUEL WAINAINA KING'URI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**AVANZAR FINANCIAL SOLUTIONS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NAHASHON BURUGU GATHUNGU ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL TRANSPORT & SAFETY AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before me is a Notice of Motion application dated 27<sup>th</sup> December 2024 filed by the appellants under the provisions of Rules 16 & 17 of the High Court (Organization and Administration) (General) Rules 2016, Rule 3 of High Court (Practice and Procedure) Rules 1953, Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 40 Rules 1, 2 & 4 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The appellants pray for an order for the status quo to be maintained by keeping motor vehicle Toyota Vanguard registration No. KCV 803P at Kahawa Sukari Police Station pending the determination of this Appeal and/or in the alternative, to have the said motor vehicle jointly sold by the appellants and the 1<sup>st</sup> respondent, and thereafter, for the proceeds to be deposited in Court.
2. 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. Samuel Wainaina King'uri, the 2<sup>nd</sup> appellant herein. He averred that together with the 1<sup>st</sup> appellant they filed an amended plaint on 16<sup>th</sup> April 2024 seeking declarations on



the illegality of the transfer of Toyota Vanguard registration No. KCV 803P, reversal of the transfer, special damages for repairs and loss of income, costs, and interest. He averred that the Trial Court delivered Judgment on 28<sup>th</sup> November 2024, prompting them to file Commercial Appeal No. E393 of 2024, which he asserts is arguable and raises substantial legal and factual issues including, reliance on a forged affidavit and disregard of their beneficial ownership rights over the suit motor vehicle. Mr. King'uri stated that without the orders being sought, the suit motor vehicle may be disposed of, or used by the respondents, rendering the Appeal nugatory and causing the appellants to suffer substantial loss. He stated that the application herein was filed without delay.

3. In opposition to the application, the 1<sup>st</sup> respondent filed a replying affidavit sworn on 31<sup>st</sup> January 2025 by Mr. Ben Gachoya, the 1<sup>st</sup> respondent's Director. He averred that the Judgment delivered on 28<sup>th</sup> November 2024 ordered the unconditional release of Toyota Vanguard registration No. KCV 803P to the 1<sup>st</sup> respondent. He further averred that the said motor vehicle was collected on 2<sup>nd</sup> January 2025 and stored securely at Grey Post Limited, to prevent vandalism and further damage which was noted while the said motor vehicle was at the Police Station. He contended that the Appeal does not invalidate the release order. He asserted that the suit motor vehicle should remain in their custody, and not be returned to the Police or sold before the Appeal is heard, as such actions would prejudice their lawful ownership and undermine the Judgment.

### **Analysis and Determination.**

4. I have considered the application herein, the grounds on the face and of it the affidavit filed in support thereof, as well as the replying affidavit by the respondent. The issues that arise for determination is whether the suit motor vehicle should be kept at Kahawa Sukari Police Station pending the determination of the Appeal or if it should be sold jointly by the appellants and the 1<sup>st</sup> respondent, and for the proceeds of the sale deposited in Court.
5. The appellants herein filed a suit in the Chief Magistrate's Court being MCCC No. E4846 of 2023 against the respondents. The suit was determined vide a Judgment delivered on 28<sup>th</sup> November 2024 in favour of the 1<sup>st</sup> respondent, directing the OCS Kahawa Sukari Police Station to unconditionally release the motor vehicle registration number KCV 803P Toyota Vanguard to the 1<sup>st</sup> respondent and/or its authorized agents.
6. In the application herein, the appellants seek an order for maintaining the status quo by keeping motor vehicle registration No. KCV 803P Toyota Vanguard at Kahawa Sukari Police Station pending the determination of this Appeal. The import of a status quo order is that it freezes the situation exactly as it is. Its effect is that it maintains the current state of affairs as it exists at the time the order is issued, until further orders by the Court.
7. The 1<sup>st</sup> respondent having demonstrated through the Motor Vehicle Acceptance Form from Grey Post Limited that the suit motor vehicle was collected from Kahawa Sukari Police Station on 2<sup>nd</sup> January 2025 and is now stored at Grey Post Limited under the 1<sup>st</sup> respondent's instructions, it is evident that the status quo order being sought by the appellants cannot be granted as it has been overtaken by events.
8. The appellants also pray for an order that the said motor vehicle be jointly sold by the appellants and the 1<sup>st</sup> respondent and thereafter the proceeds be deposited in Court. It is however noteworthy that the Judgment delivered by the Trial Court granted physical and legal ownership of the suit motor vehicle to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent has neither expressed its intention to sell neither have the appellants demonstrated that the 1<sup>st</sup> respondent intends to sell the suit motor vehicle. Therefore, in the absence of an order from a Court of competent jurisdiction setting aside the Judgment delivered by the



Trial Court on 28<sup>th</sup> November 2024, this Court cannot issue an order compelling the 1<sup>st</sup> respondent to sell the suit motor vehicle jointly with the appellants and to deposit the proceeds of the said sale in Court.

9. Although the appellants have an undoubted right of appeal against the Trial Court's Judgment, the 1<sup>st</sup> respondent has a decree which it should not be obstructed from executing unless there is a good reason. The appellants contended that in the event that the orders being sought herein are not granted, they stand to suffer substantial loss. Substantial loss was defined by the Court in *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR as follows –

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail...

10. In this instance, I am not persuaded that the appellants stand to suffer substantial loss owing to the deprivation of their ownership rights regarding the suit motor vehicle in the event that the orders being sought herein are not granted, as there is a valid Judgment that has neither been varied and/or set aside by a Court of competent jurisdiction, granting the physical and legal ownership of the suit motor vehicle to the 1<sup>st</sup> respondent. It can therefore not be said that the appellants have been and/or will be deprived of their ownership rights of the suit motor vehicle in the event that the instant application is disallowed.
11. I am not persuaded that the appellants have made out a case to warrant interference with the 1<sup>st</sup> respondent's ownership and use of the suit motor vehicle.
12. In the circumstances, this Court finds that the appellants' application dated 27<sup>th</sup> December 2024 is not merited. It is hereby dismissed with costs to the 1<sup>st</sup> respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 24<sup>TH</sup> DAY OF OCTOBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Mr. Morara Omoke for the appellants/applicants

No appearance for the respondents

Ms B. Wokabi - Court Assistant.

