

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT VOI**

**CIVIL APPEAL NO. E056 OF 2025**

**CHINA JIANGSU INTERNATIONAL ECONOMIC TECHNICAL  
COOPERATION EAST AFRICA COMPANY LTD.....**

**APPELLANT**

**=VERSUS=**

**TRANSEAST**

**LIMITED.....RESPONDENT**

**RULING**

1. The application coming for consideration in this Ruling is the one dated 30<sup>th</sup> September 2025 brought under Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010 & Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Chapter 21 of the Laws of Kenya and all enabling provisions of the law seeking the following orders;-

- (i) THAT this application be certified urgent and the same be heard ex parte in the first instance.**
- (ii) THAT pending hearing and determination of this application the Honourable Court be pleased to**

**grant the Appellants/Applicants stay of execution of the ruling delivered on the 28<sup>th</sup> day of August 2025 in Voi CMCC No. E001 of 2020.**

**(iii) THAT this Honourable Court be pleased to grant the Appellant/Applicants stay of execution of the ruling delivered on the 28<sup>th</sup> day of August 2025 in Voi CMCC No. E001 of 2020 pending hearing and determination of this appeal.**

**(iv) THAT the cost of this application be provided for.**

2. The application is based on the following grounds:-

**(i) The Applicant is the lawful owner of motor vehicles with registration numbers KCE 883J, KBP 080Q, KCD 912Z and KCD 181W respectively which were attached in execution of a decree against the judgment-debtor, who has no legal and/or equitable interest in the said motor vehicles and/or properties.**

**(ii) The trial court in its ruling dated and delivered on the 28<sup>th</sup> day of August 2025 dismissed the Appellant/Applicant's objection proceedings**

**and/or objections dated 4<sup>th</sup> February 2025 and 25<sup>th</sup> February 2025 respectively brought under the provisions of Order 22 Rules 51 through to 57 of the Civil Procedure Rules 2010 thereby allowing the decree-holder to proceed with attachment and sale of the applicant's properties and/or motor vehicles.**

- (iii) The Appellant/Applicant has lodged a meritorious appeal against the said ruling which has high chances of success.**
- (iv) That unless stay of execution is granted, the decree-holder in lower court matter who is the Respondent herein is likely to dispose of the attached motor vehicles at any time thereby rendering the appeal nugatory and occasioning the Applicant substantial loss.**
- (v) That the Appellant/Applicant is ready, wiling and able to comply with any conditions the Honourable Court may impose, including provision of security as the Honourable Court may deem fit.**

**(vi) It is in the interest of justice that the Appellant/Applicant's properties be preserved pending the hearing and determination of the appeal.**

3. The application is supported by the affidavit of **MAXWELL NYAKONI** sworn on 30<sup>th</sup> September 2025 as follows:-

**(i) THAT I am an Advocate of the High Court of Kenya practicing in the firm name and style of NYAKONI RATEMO & CO. ADVOCATES which Advocate and/or law firm is duly briefed and/or instructed to act for the Appellant/Applicant herein and as such I am well conversant with the matter herein and therefore competent to swear this affidavit in support of the application herein.**

**(ii) THAT motor vehicles with registration numbers KCE 883J, KBP 080Q, KCD 912Z and KCD 181W respectively are lawfully owned by the Appellant/Applicant and/or the Appellant/Applicant has a legal and/or equitable interest in the said motor vehicles and/or properties which were proclaimed and/or**

**attached in execution of a decree in VOI CMCC No. E001 of 2020.**

- (iii) THAT the trial court in its ruling dated and delivered on the 28<sup>th</sup> day of August 2025 dismissed the Appellant/Applicant's objection proceedings and/or objections dated 4<sup>th</sup> February 2025 and 25<sup>th</sup> February 2025 respectively brought under the provisions of Order 22 Rules 51 through to 57 of the Civil Procedure Rules 2010 thereby allowing the decree-holder in the lower court matter who is the Respondent herein to proceed with attachment and sale of the applicant's properties and/or motor vehicles.**
- (iv) THAT being dissatisfied with the said ruling, the Appellant/Applicant filed the present appeal which is a meritorious one with high chances of success challenging the said ruling dated 28<sup>th</sup> August 2025.**
- (v) THAT unless this Honourable Court grants a stay of execution the decree-holder may proceed to sell the motor vehicles which will occasion the**

**Appellant/Applicant irreparable losses or damages and render the appeal herein nugatory.**

**(vi) THAT the Appellant/Applicant is ready and willing to abide by such conditions as the Honourable Court may deem fit for the grant of stay, including the provision of reasonable security.**

**(vii) THAT this application has been brought without unreasonable delay and in good faith.**

**(viii) THAT it is in the interest of justice for the application herein to be granted as prayed and/or allowed.**

4. The Respondent filed a Replying Affidavit sworn by **MBAGO OMONDI** opposing the application dated 16<sup>th</sup> October 2025 as follows:-

**(i) THAT I am an Advocate of the High Court of Kenya practicing as such in the firm, name and style of M/s. Murimi, Mbago & Muchela Advocates who are in conduct of this matter on behalf of the Respondent Company hence duly competent to depone to this affidavit.**

- (ii) THAT my true place of abode is Mombasa County in the Republic of Kenya.**
- (iii) THAT I am fully conversant with the facts and circumstances of the instant appeal hence competent to swear this affidavit.**
- (iv) THAT I have read and understood the Appellant's application dated 30th September 2025 and the affidavit in support thereof and hereby confer my response thereto as hereunder.**
- (v) THAT I verily believe that the aforesaid application is mischievous, misleading a mere red-herring and utterly devoid of merit.**
- (vi) THAT ruling on the Appellant's objection was pronounced on 28<sup>th</sup> August 2025 wherein the trial court dismissed the objection with costs. The instant appeal was filed on 27<sup>th</sup> September 2025 which is well over three weeks from the date of the ruling and the application has thus been lodged belatedly.**
- (vii) THAT it is thus axiomatic that the instant application has lodged after undue delay and the**

**Honourable Court should thus be disinclined to exercise its discretion in favor of the Applicant who has lodged the application after a prolonged delay.**

- (viii) THAT the Appellant lodged two applications dated 4<sup>th</sup> and 25<sup>th</sup> February 2025 before the trial court and sought orders to stop sale of motor vehicle registration number KCE 883J, KBP 080Q and KCD 912Z by public auction slated for 11<sup>th</sup> March 2025 at 10:00a.m.**
- (ix) THAT the trial court did not grant interim orders stopping the impending sale by public auction but only gave orders of status quo at 12:00p.m on the 11<sup>th</sup> March 2025 which was two hours after the auction had already been conducted.**
- (x) THAT three motor vehicles were sold at the auction and respective certificates of sale duly issued by the aforementioned auctioneers.**
- (xi) THAT one of the successful bidders has thus far sought vesting orders from the trial court i.e on the 12.09.2025.**

**(xii) THAT the auctioneer aforementioned has already finalized execution and remitted the decretal sum to the Respondent. The only motor vehicle which remains unsold and in the possession and custody of the auctioneers is registration number KCD 181W. Despite an exponential accrual of storage charges, we have notified the auctioneers to obey the court order staying execution.**

**(xiii) THAT the instant application has thus been overtaken by events since the decretal sum has already been remitted to the Respondent. The orders sought by the Applicant have in view of the foregoing facts, apparently been overtaken by events.**

5. The parties filed written submissions as follows; The Appellant/Applicant submitted that its application for a stay of execution pending appeal should be granted.
6. That the appeal, which challenges the lower court's ruling authorizing the attachment and sale of its motor vehicles, is meritorious and raises substantial legal questions concerning

the regularity of the execution process, particularly the alleged non-compliance with the mandatory provisions of the Auctioneers Act and the Civil Procedure Rules during a purported auction.

7. The Applicant contends that this appeal has a high likelihood of success.
8. That should execution proceed, the Applicant stands to suffer irreparable harm.
9. The vehicles in question are vital and unique business assets essential for its specialized operations, and their loss could not be adequately remedied by damages, thereby rendering the appeal nugatory.
10. Furthermore, the balance of convenience firmly favours maintaining the status quo, as the Respondent can be fully secured for the decretal sum.
11. The application was filed without unreasonable delay, and the Applicant has demonstrated a willingness to provide security for the due performance of the decree.
12. For these reasons, the Applicant prays that the stay of execution be granted.

13. The Respondent opposed the Appellant's application for stay of execution on the grounds that it fails to satisfy the mandatory conditions set out in Order 42 Rule 6 of the Civil Procedure Rules and is, in any event, overtaken by events.
14. The Appellant has not demonstrated that it will suffer substantial loss, which is the cornerstone for granting a stay.
15. The principles established in **Century Oil Trading Company Ltd vs. Kenya Shell Limited and Machira t/a Machira & Co Advocates v East African Standard** require an applicant to prove a loss beyond the ordinary consequence of execution, which the Appellant has not done.
16. Its supporting and supplementary affidavits are silent on this crucial point, instead improperly attempting to challenge the auctioneering process—a matter that was supervised by and falls within the purview of the Trial Court, as held in **Ramogi v Great Lakes University Kisumu**.
17. Furthermore, execution has largely been completed, with the auctioneer having sold three motor vehicles and remitted the decretal sum to the Respondent, rendering the application moot.

18. Regarding the merits of the intended appeal, the Appellant has failed to show an arguable case with a likelihood of success.
19. The appeal appears focused on challenging the execution process conducted by an auctioneer who is not a party to these proceedings, making it improper for this Court to issue any adverse orders against him.
20. The authority of **Palace Investments Limited v Geoffrey Kariuki Mwenda & another** underscores that such a challenge cannot properly be adjudicated without the auctioneer being joined.
21. While the application was filed without significant delay after the ruling, the Appellant has failed to offer any security for the due performance of the decree, which is a mandatory requirement and a mark of good faith, as emphasized in **James Wangalwa & Another v Agnes Naliaka Cheseto and Focin Motorcycle Co. Limited vs. Ann Wambui Wangui & another.**
22. In conclusion, the application is unmerited, has been overtaken by events, and should be dismissed with costs.

23. In the alternative, should the Court be minded to consider any relief, the Appellant must be ordered to bear the accruing storage charges for the remaining attached motor vehicle.

24. The issues for determination in the Application dated 30<sup>th</sup> September 2025 are as follows;

**(i) Whether the application for stay of execution pending appeal has been rendered moot (overtaken by events).**

**(ii) Whether the Applicant has satisfied the conditions for granting a stay of execution pending appeal as stipulated under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010.**

**(iii) What orders should issue as to costs and the preservation of the subject matter.**

25. The jurisdiction of this court under Order 42 Rule 6 of the Civil Procedure Rules is discretionary, but it must be exercised judiciously and in accordance with established principles, not capriciously.

26. The primary purpose of an order for stay of execution pending appeal is to preserve the subject matter in dispute so that the appeal, if successful, is not rendered nugatory.

27. At the same time, the court must balance this against the successful decree-holder's right to enjoy the fruits of its judgment.

28. I have carefully considered the rival affidavits and submissions, the nature of the asset remaining, and the unique circumstances of this case where execution has been undertaken.

29. I address first the Respondent's claim that the application is overtaken by events. It is conceded that three of the proclaimed motor vehicles were sold at a public auction, the decretal sum has been satisfied, and the transaction is complete.

30. Consequently, to the extent that the application seeks stay in respect of motor vehicles KCE 883J, KBP 080Q, and KCD 912Z, it cannot be granted as those assets are no longer available for preservation.

31.The application is therefore only viable concerning motor vehicle registration number KCD 181W, which remains unsold and in the custody of the auctioneer.

32.The appeal against the ruling dismissing the Applicant's objection proceedings retains its utility in relation to this vehicle, and the application is not moot in the circumstances.

33.On the conditions set out in Order 42 Rule 6(2), I begin with substantial loss. The Applicant asserts that the vehicles are vital business assets.

34.While this was a general assertion, the context of this application now is singular.

35.The loss of this remaining vehicle through sale, pending an appeal that challenges the very legality of its attachment, would constitute substantial loss.

36.Should the appeal succeed, the Applicant would be compelled to pursue a vague claim for its value against the Respondent, who is already satisfied by the sale of the other three vehicles.

37.This would render the appeal nugatory. Preserving the specific, identifiable asset (KCD 181W) pending the appeal's

outcome is the only way to prevent an irremediable situation,

38. On the issue of delay, I find that the application was filed within a reasonable time after the ruling of 28th August 2025. There has been no undue lethargy.

39. The condition of security for the due performance of the decree requires a tailored approach in the peculiar circumstances of this case.

40. The decretal sum has been fully settled from the proceeds of the other three vehicles.

41. Therefore, the rationale for demanding further security from the Applicant to secure the decree against the judgment-debtor is substantially diminished, if not extinguished.

42. The Respondent's legitimate interest now is not in securing the decree, but in avoiding further expense.

43. In exercising its discretion under Order 42 Rule 6(2), the court is not bound to impose a monetary security where the circumstances render it unnecessary or unjust.

44. The overriding objective under Sections 1A and 1B of the Civil Procedure Act commands the court to facilitate the just, expeditious, and proportionate resolution of disputes.

45. Requiring security in this context would not be fair in the circumstances.

46. However, justice also demands that the Applicant, who seeks the equitable remedy of stay, must approach the court with clean hands and bear the consequences of its own application.

47. The vehicle has been in the auctioneer's custody, incurring storage charges. It would be inequitable for the Respondent, who is no longer a creditor seeking satisfaction, to bear this ongoing cost pending an appeal by a third-party claimant.

48. The offer to pay reasonable storage charges, which is a logical corollary of seeking the release of the vehicle, is a sufficient and appropriate undertaking in lieu of traditional security for the decree.

49. On the arguability of the appeal, the intended appeal raises issues regarding the propriety of the attachment of a third party's assets and the conduct of the execution process.

50. Without determining the merits, these are not frivolous issues, the court at this stage need only be satisfied that the appeal is not a sham.

51. Finally, the balance of convenience and the interest of justice tilts in favour of preserving the status quo for the remaining vehicle.

52. The Respondent has already recovered its decree. The Applicant stands to lose its property based on a ruling it is challenging.

53. The minimal risk to the Respondent can be extinguished by the Applicant's undertaking on costs.

54. In the exceptional circumstances of this case, and in the interest of justice, the Notice of Motion application dated 30th September 2025 is partially allowed in the following specific terms;

**(i) THAT there shall be a stay of execution of the ruling delivered on 28th August 2025 in Voi CMCC No. E001 of 2020, but only in relation to motor vehicle registration number KCD 181W, pending the hearing and determination of the appeal herein.**

**(ii) THAT the said motor vehicle registration number KCD 181W shall be released by the auctioneer to the Appellant/Applicant, upon the Applicant's**

**payment of accrued and reasonable storage and auctioneer's charges.**

**(iii) THAT in the event of a dispute, the charges be taxed by the Deputy Registrar of this court.**

**(iv) For the avoidance of doubt, the orders of stay and release do not apply to motor vehicles registration numbers KCE 883J, KBP 080Q, and KCD 912Z.**

**(v) THAT the costs of this application shall be in the cause of the appeal.**

**Dated, signed and delivered this 18<sup>th</sup> day of December 2025 in open court at Voi High Court.**

**ASENATH ONGERI  
JUDGE**

**In the presence of:-**

**Court Assistant: Mabishi/Millicent**

**Mr. Ratemo for the Appellant**

**Miss Atieno holding brief for Mr. Mbago for the Respondent**