



Kamau v Kelwon and another (Suing as the Administrators of the Estate of the Late Elijah Kelwon Chebure) & 5 others (Civil Appeal E064 of 2025) [2025] KEHC 19011 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E064 OF 2025
AN ONGERI, J
DECEMBER 19, 2025**

BETWEEN

PETER GITIHA KAMAU APPELLANT

AND

MAGDALINER TABUTANY KELWON AND ELIJAH KELWON CHEBURET (Suing as the Administrators of the Estate of the Late Elijah Kelwon Chebure) 1ST RESPONDENT

CHOGA CHINDORO 2ND RESPONDENT

JOSHUA MATHENGE 3RD RESPONDENT

EAST AFRICAN INSTITUTE OF AFRICAN STUDIES 4TH RESPONDENT

EAST NCBA BANK KENYA PLC 5TH RESPONDENT

JOSEPH MUIRI KARIUKI 6TH RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated 21st november 2025 brought under Article 25(c), 48, 51(1), and 159(2)(d) of *the Constitution* of Kenya and Section 3 and 79G of the *Civil Procedure Act*, Cap 21 Order 22 Rule 22 and Order 42 Rule 6 of the Civil Procedure Rules seeking the following orders:-
 - i. This notice of Motion be certified as urgent and be heard ex parte and service thereof on the Respondents be dispensed with in the first instance owing to the extreme urgency demonstrated.



- ii. Pending the hearing and determination of this notice of Motion, there be a stay of execution and further execution of the Decree and all subsequent processes in Voi Chief Magistrates Court Case no. CMCC no. E249 of 2022 and there be a stay of the release to the 1st Respondents herein, Magdaliner Tabutany Kelwon and ELIJAH Kelwon Cheburet (Suing as the Administrators of the Estate of the Late Elijah Kelwon Cheburet or any other person, of the purported proceeds of the unlawful sale of the Appellant's PSV vehicle KCY 289C; and the proceedings in Voi Chief Magistrates Court MCC E249 of 2022 be thus stayed until further Orders of this Court.
 - iii. Pending the hearing and determination of the Appeal filed by the Appellant/Applicant herein, there be a stay of execution and further execution of the Decree and all subsequent processes in Voi Chief Magistrates Court case no. CMCC no. E249 of 2022 and there be a stay of the release to the 1st Respondents herein, Magdaliner Tabutany Kelwon & ELIJAH Kelwon Cheburet (Suing as the Administrators of the Estate of the late Elijah Kelwon Cheburet or any other person, of the purported proceeds of the unlawful sale of the Appellant's PSV vehicle KCY 289C; and the proceedings in Voi Chief Magistrates Court MCC E249 of 2022 be thus stayed until further Orders of this Court.
 - iv. Pending the hearing and determination of this notice of Motion, there be a stay of any registration of change of ownership of the Appellant's PSV vehicle KCY 289C with the National Transport & Safety Authority (NTSA) and there be no release of any logbook of the said KCY 289C to any person until further Court Orders.
 - v. Pending the hearing and determination of this Appeal herein, there be a stay of any registration of change of ownership of the Appellant's PSV vehicle KCY 289C with the National Transport & Safety Authority (NTSA) and there be no release of any logbook of the said KCY 289C to any person.
 - vi. The costs of this application be to the Applicant herein.
2. The application is based on the following grounds:-
- i. Dissatisfied with the impugned Ruling and Order dated 7th november 2025 issued by Hon. M. Obura (CM) in Voi Chief Magistrates Court MCC E249 of 2022 on his objection proceedings dated 2nd September 2025 lodged in the said Subordinate Court case pursuant to Order 21 Rules 52, 53 and 54 of the Civil Procedure Rules, the Applicant herein has lodged a Memorandum of Appeal timeously and served it upon the Respondents as mandated. This confers the statutory jurisdiction on this Appellate Court to intervene herein.
 - ii. Leave was granted to the Appellants/Applicant to lodge the instant appeal on 20th november 2025 and the certified copy of the Order of the Court was posted on the CTS.
 - iii. Equally the Applicant formally wrote a Letter to the subordinate court administrator dated 20th november 2025 requesting to be furnished with the typed and certified copies of the proceedings, ruling and order dated 7th november 2025 made by Hon. M. Obura – CM in Voi Chief Magistrates Court MCC E249 of 2022 between the parties herein.
 - iv. As at the date of making of this motion the typed proceedings as ordered have not been furnished on the Appellant yet the stay of execution Order is to lapse on 6th October 2025 as orally pronounced thus exposing the Appellant to the danger of unlawfully losing his PSV vehicle KCY 289C in wholly illegal circumstances.



- v. Accordingly, this Honourable High Court on Appeal is properly clothed with statutory jurisdiction to intervene as sought and hold the subject matter of the appeal in situ.
- vi. Unless this Honourable court intervenes as sought in its appellate jurisdiction, the Applicant will suffer irreparable injury as the 1st Respondents (Plaintiffs in the Subordinate Court) who have no known source of income, or any assets are likely to dispose off the Appellant's PSV vehicle KCY 289C subject of the Subordinate Court unlawful execution proceedings to third parties.
- vii. At any rate upon the grant of the Applicant's Appeal herein and the Orders sought be issued, his said vehicle if transferred to third parties and the under-value purported sale funds purportedly "realized by the 1st Respondent's auctioneers" be released to the 1st Respondents before the Applicant's Appeal is heard and determined lacking any source of income or assets the said 1st Respondents may very well encumber and saddle the Applicant with the potential danger of the loss of the said vehicle totally. This informs the Appellant's plea in prayer 4 of the instant motion.
- viii. Indeed, any prospective purchaser/financial institution conducting a search on the NTSA records of the said vehicle upon such lifting of the Objection Proceedings stay of execution thereto in favour of the Applicant and vesting the same in the 1st Respondents would readily conclude that there is nothing to stop them from dealing in the same in spite of the existence of the Applicant's appeal. The necessity of Order 4 herein sought is therefore imperative.
- ix. Upon the success of the Applicant's Appeal herein (as is the very likely event), the Applicant will have thence to deal with third parties who may even assert to be bona fide purchasers for value of the Appellant's wrongfully attached vehicle KCY 289C hence to untangle the illegalities so created would unnecessarily take up more Judicial time.
- x. Consequently and granted the fact that the violation of the Applicant's proprietary interest under Article 40(3) of *the Constitution* of Kenya in the PSV vehicle KCY 289C carries with it dire and even irreversible consequences, it is imperative that this Honourable Court issues a stay of execution order appealed against as herein sought.
- xi. The Applicant invokes this court's appellate jurisdictional powers to secure justice from this Honourable Court to the intent that the status quo ante in regard to his said vehicle and property therein be preserved as he pursues the appeal.
- xii. Unless this Honourable Court intervenes as sought, the Applicant's right of appeal constitutionally entrenched and affirmed in Article 50(1) of *the Constitution* of Kenya as well as his right to access justice under Article 48 of *the Constitution* of Kenya will manifestly have been oppressively taken away.
- xiii. The Applicant who is the lawful and equitable proprietor of the suit vehicle KCY 289C will have essentially have had his right to the same as protected under Article 40(3) of *the Constitution* of Kenya taken away yet other than mere allegations from the 1st Respondents of the purported legal ownership of the vehicle by the 3rd and 4th Defendants/Respondents in the Subordinate Court the Court did not find any act of collusion of the Appellant with the 2nd, 3rd or 4th Respondents any illegality, fraud, corruption or malfeasance on the part of the Applicant in regard to the suit vehicle KCY 289C such as would otherwise vitiate the Applicant's equitable and possessory title thereto.



- xiv. There is therefore no basis to impeach the Applicant's title to the suit vehicle KCY 289C held in possession by him at all material times to the impugned processes provoking the Objection Proceedings lodged in the Subordinate Court.
- xv. The Appeal process before this Honourable Court now invoked by the Applicant is part of the due process to which the Applicant are entitled to under Article 25(c) of *the Constitution* of Kenya, in order to secure justice as envisaged under Article 159(2)(b) of *the Constitution* of Kenya.
- xvi. The Applicant has an arguable appeal as demonstrated in his Memorandum of Appeal annexed to his supporting affidavit.
- xvii. By his Memorandum of Appeal in appealing against the impugned Ruling and Order dated 7th november 2025, made by Hon. M. Obura – CM in Voi Chief Magistrates Court Case no. CMCC no. E249 of 2022 the Appellant's Grounds of Appeal inter alia are:-
1. The Learned Magistrate erred in law in failing to issue a ruling that was undated in violation of Order 21 Rule 3(1) of the Civil Procedure Rules by reason of which the impugned findings set out in the impugned Ruling are a nullity.
 2. notwithstanding the Learned Magistrate erred in failing to appreciate the fact that the Appellant had acquired equitable title, control and ownership of the subject PSV motor vehicle prior to any execution process in the suit before her being placed in motion.
 3. The Learned Magistrate erred in law and fact in her Order and Ruling rendered on 7th november 2025 in dismissing the Appellant Objection Proceedings notice of Motion dated 2nd September 2025 before her without considering at all the merits of the Appellant/Objector's totality of the material evidence he tendered before her, which on aggregate warranted her setting aside the Warrants of Sale and Attachment wrongfully levied on the Appellant's/Objector's PSV motor vehicle KCY 289C wrongfully attached and hence the Appellant was condemned unheard, by reason of which decision appealed against a grave miscarriage of justice was thereby occasioned against the Appellant.
 4. The Learned Magistrate (with respect) misdirected herself did not consider in the least the evidence set out in the Appellant's Supplementary Affidavit sworn on 18th September 2025 before her, which detailed how the Appellant had purchased the unlawfully attached subject PSV KCY 289C as an innocent purchaser for value without notice of these proceedings or any claim by third parties thereto. She thereby arrived at an unjust and oppressive decision.
 5. The Learned Magistrate (with respect) erred when she Failed to consider the Appellant's submissions dated 18th September 2025 before her and particularly the binding decisions cited by the Appellant in support of his Objection proceedings, in violation of the doctrine of stare decisis, set out in Article 163(7) of *the Constitution* of Kenya and she thereby arrived at a wrong and an unjust decision.
 6. The Learned Magistrate (with respect) erred when she Failed to consider that the Appellant's PSV KCY 289C was wrongfully seized by the 1st Respondents/Plaintiffs Chador Auctioneers without any Proclamation having ever been served on the Appellant in express breach of Rule 12(1) of the Auctioneers Rules, giving rise to the



Appellant's Objection Proceedings before her and which issue entitled the Learned Magistrate ex debito justitiae to set aside the impugned attachment of the Objector's PSV vehicle KCY 289C and which she Failed to do.

7. The Learned Magistrate (with respect) Failed to consider that the Appellant's PSV KCY 289C was seized in a criminal act of carjacking by the 1st Respondents/Plaintiffs' Chador Auctioneers and by her decision appealed against effectively endorsed the said illegality in violation of the doctrine of ex turpi causa oritur non action which the Appellant relies on to nullify the decision of the Learned Magistrate.
8. The Learned Magistrate erred in dismissing the Appellant's Motion dated 2nd September 2025 and Failed to consider the facts of his own Objection Proceedings presented by the Appellant/1st Objector's said Motion, separately from the 2nd Objector's Objection proceedings dated 3rd September 2025 and in bundling the 2 separate applications together she thereby denied the Appellant an opportunity to be heard fairly on merit, hence curtailing the Appellant's Constitutional rights under Articles 25(c), 48 and 51(1) of *the Constitution* of Kenya to be heard on merit before being condemned.
9. The Learned Magistrate misapprehended the entire scope and application of Order 22 Rule 51(1) of the Civil Procedure Rules 2020 in relation to the Appellant's Objection Proceedings dated 2nd September 2025 and thereby arrived at an unlawful decision relying on the supposition (without proof) that the Appellant knew of the existence of the Judgement and Decree herein, when the Appellant had denied on oath ever having been made aware of these proceedings at all by any party.
10. The Learned Magistrate erred in failing to appreciate that no injunction motion had been filed by the 1st and 2nd Respondents (Plaintiffs in the Subordinate Court) under Order 40 Rule 1 and 2 of the Civil Procedure Rules to restrain the Defendants in the suit before her from disposing of the subject motor vehicle belonging to the Appellant by reason of which the Appellant could not be blamed for having acted innocently to purchase the subject m/v KCY 289C through the NCBA Bank the 4th Defendant before the Court.
11. The Learned Magistrate erred in delaying the rendering of the impugned decision rendered on 7th november 2025 on the Appellant's Objection Proceedings dated 2nd September 2025 and postponed the delivery of the Ruling thereon 3 times in breach of the mandate prescribed under Order 22, Rule 54 of the Civil Procedure Rules.
12. The Learned Magistrate erred in law when she adjourned the Appellant's Objection Proceedings dated 2nd September 2025 beyond the statutory period set in Order 21 Rule 54 of the Civil Procedure Rules and Failed to hear and determine the said proceedings expeditiously and she thereby arrived at a decision in violation of Article 50(2)(e) of *the Constitution* of Kenya.
13. The Learned Magistrate erred in dismissing the Appellant's Proceedings Motion dated 2nd September 2025 while alleging that the Appellant had colluded with the 3rd Defendant herein to avoid satisfying the terms of the Judgment of the Court in the suit when no such evidence was tabled by the Respondents at all.



14. The Learned Magistrate was biased against the Appellant in her pithy “ruling” and Order dated 7th november 2025 without considering that there was no lawful execution that was levied against the Appellant/Objector in the suit before her and she thereby arrived at a wrong decision.
15. The Learned Magistrate erred in law when she Failed in her Ruling/Order rendered on 7th november 2025 to find and hold that a fortiori there having been no lawful and/or no Proclamation issued to the Appellant at all in breach of the duty on the 1st and 2nd Respondents/Plaintiffs’ CHADOR Auctioneer as mandated by Order 12 of the Auctioneer Rules such purported execution process as undertaken by Chador Auctioneer as against the Appellant/1st Objector was a nullity ab initio and therefore no execution could lawfully issue against the Appellant/Objector absent compliance with the said mandatory provision.
16. The Learned Magistrate erred in law and in fact when she dismissed the Appellant’s Objection Proceedings dated 2nd September 2025 without assessing the legal and/or equitable interest established by the Appellant/1st Objector in the “attached” PSV vehicle KCY 289C wrongfully attached as mandated by Order 22 Rule 53 of the Civil Procedure Rules and thereby arrived at a wrong decision.
 - xviii. In light of the foregoing arguable points on appeal raised by the Applicant, absent the intervention of the Court and should the suit PSV vehicle now in the names of the Applicant be transferred to the 1st Respondents and or third parties, dealings with third even fourth parties will have essentially altered the character of the suit vehicle.
 - xix. The balance of convenience tips in preserving the suit vehicle as herein sought and to hold in situ the moneys alleged to have been “realized” by the 1st Respondent’s auctioneers in as much as the 1st Respondent will in no wise suffer any loss by the grant of the stay of execution Order.
 - xx. At any rate, the suit vehicle itself is security in, and of itself such that the 1st Respondents would still enforce the Court Orders in the very unlikely event the Court on Appeal upholds the Subordinate Courts’ verdict. The converse is not true, necessitating the issuance of the Order sought.
 - xxi. no prejudice will be visited on the 1st Respondents or any other party by the grant of the Orders herein.
 - xxii. The Appellant herein, being the 1st Objector in Voi Chief Magistrates Court MCC E249 of 2022 and being dissatisfied with the entire Ruling and Order delivered on 7th november 2025 (but undated) made by Hon. M. Obura (CM) is clearly entitled to challenge the said unlawful decision on appeal to the High Court of Kenya in Nairobi thereon.
 - xxiii. Absent the court’s intervention the Appeal herein will be reduced into an academic exercise.

3. The application is supported by the affidavit of the Applicant Peter Githa Kamau sworn on 21st november 2025 as follows:-



- i. I am the Appellant/Applicant herein and I make this deposition as such in support of my Motion dated 21st november 2025 and having been the 1st Objector in my Objection Proceedings lodged in the Subordinate Court. I make this deposition as such.
- ii. I aver that to date I remain the lawful registered proprietor of the PSV motor vehicle KCY 289C and I annex the NTSA records confirming as much on this 21st november 2025 marked as exhibit “PKA 1”.
- iii. I verily believe the above record of the NTSA on the legal status of the proprietorship of KCY 289C entitles the Court to grant the relief I have sought herein, and to preserve the subject matter so that my appeal herein is not rendered nugatory.
- iv. Being the Appellant/Applicant herein, I was the 1st Objector in the Objection Proceedings in the Subordinate Court’s Voi MCCC no. E249 of 2022 (which is between the 1st and 2nd – 4th Respondents herein) dated 2nd September 2025. I now annex hereto and marked as exhibit “PKA 2” the bundle of the said proceedings and my submissions tendered before the Subordinate Court.
- v. As I have stated above, I am (and I remain as at this 21st november, 2025) the Registered and legal owner of my PSV vehicle registration KCY 289C and I am sorely apprehensive that I stand to be unlawfully deprived of my said PSV following the lifting of the stay of execution Order and dismissal of my stay of execution of the unlawfully executed warrants of attachment of my said vehicle on this 21st november 2025.
- vi. I recall that following the determination (without oral highlights) on 7th november 2025 in an undated Ruling the Hon. Obura dismissed my said Objection Proceedings Motion dated 2nd September 2025 while my Counsel as not admitted on the Court platform to take the Ruling and she only read the last part of the said decision. I now annex hereto and marked as exhibit “PKA 3” a copy of the said impugned ruling the Subordinate Court.
- vii. Mr. Harrison Kinyanjui Advocate informed me that immediately when he was admitted online before Hon. Obura shortly thereafter on the said 7th november 2025, he requested to be informed what the Learned Magistrate had decided on my Objection proceedings, whereupon the Hon. Obura indicated to my Advocate that she had already rendered the ruling thereon and that the same would be uploaded on the CTS.
- viii. However Mr. Harrison Kinyanjui Advocate informed me that the subject ruling was not so uploaded and my Counsel thereupon established from contacting the Plaintiff’s Counsel in my presence that my subject Objection proceedings had been dismissed.
- ix. I was informed by my Advocates on record that as leave to appeal is necessary against the said decision, immediately thereupon (on the same 7th november 2025), I had to lodge a notice of Motion seeking such leave as well as a stay of execution of the Decree pending the hearing and determination thereof as well as pending the hearing of the intended appeal.
- x. My said Motion was indeed certified as urgent but it was not heard immediately nor was leave granted as I had sought and I heard the Learned Magistrate state online that she had reserved the inter partes hearing on 20th november 2025.
- xi. I recall while being online on the 20th november 2025 the Subordinate Court (Hon. M. Obura, CM) heard my Motion dated 7th november 2025 which I have produced above, and



the Plaintiff's (1st Respondents) Counsel consented to the grant of leave to me but objected to the grant of limited stay of execution of the decree as I had sought for a mere 14 days.

- xii. I then heard the Hon. Magistrate state that she would render her Ruling on the issue of stay to this 21st november 2025 at 11:30a.m.
- xiii. I recall that during the inter partes hearing of my Motion dated 7th november 2025 on 20th november, 2025, my Advocates on record pointed out that the Plaintiffs/Decree Holders/1st Respondents herein did not tender any affidavit of any Evidence to explain to the Court the status of the proceeds of any sale if (and only if) of my wrongfully attached motor vehicle subject of this appeal or any evidence of the conduct of a lawful public auction or any evidence whether any had been conducted to prove that the jurisdiction of the court had dissipated.
- xiv. Mr. Harrison Kinyanjui Advocate has advised me that in the result, it was not open to the Learned Magistrate to speculate on the status of the legal ownership of my said Motor vehicle, as Chador Auctioneers instructed by the 1st Respondent had not filed any single document before the Subordinate Court to explain under what circumstances he had carjacked my subject motor vehicle WITHOUT a Proclamation ever being issued to me.
- xv. I verily believe in the light of this that accordingly, the jurisdiction of the Subordinate Court ought to have been exercised to permit me the limited grant of stay of execution which I had sought, once my Objection Proceedings were dismissed so that I could appeal.
- xvi. I aver that indeed, upon the grant of the said leave to me to appeal, on 20th november 2025 I immediately did lodge the instant appeal and in fact I heard my advocates on record inform the Hon. Obura during the online court session today (21st november, 2025) that this appeal had indeed been lodged.
- xvii. I was therefore stunned that on this 21st november 2025 the Hon. Obura dismissed my application for stay of execution pending my appeal dated 7th november 2025 and she directed that the said Ruling thereon would be uploaded on the CTS later in the day. As at now (4:30p.m) I have been informed by Mr. Harrison Kinyanjui Advocate that it has not been uploaded.
- xviii. It is clear that indeed I have an arguable appeal (as demonstrated in the weighty grounds of appeal I have lodged) and as informed by my Advocates on record, Article 27(1) of *the Constitution* of Kenya (the right to the protection of the law) accords this Honourable Appellate Court the jurisdiction to issue an Order of stay of execution pending the determination of my appeal so that my appeal is not rendered nugatory in order for me to access justice under Article 48 of *the Constitution* of Kenya.
- xix. Inter alia from my above Memorandum of Appeal, I contend on appeal that the 2nd, 3rd and 4th Respondents herein (the respective Defendants) who were sued by the Plaintiffs (1st Respondents herein) in the cited Subordinate Case for alleged default in remitting alleged decretal sum never disclosed to me of any Decree, Order or demand for settlement of any dues under the subject Subordinate Case as at when I was purchasing his vehicle KCY 289C from the 3rd and 4th Defendants.
- xx. I am persuaded that on account of this very weighty issue I contend that the Subordinate Court had no jurisdiction to order the sale of my stated vehicle KCY 289C at all on this 21st november 2025 as it did or at all since I was a bona fide purchaser for value with no notice of these proceedings at all.



- xxi. In my Appeal herein, I further object that without the Subordinate Court having examined at all the merits of my Supplementary Affidavit lodged in my Objection Proceedings Motion dated 2nd September 2025 wherein I provided evidence that I have a legal and equitable right to the unlawfully attached PSV KCY 289C, the Hon. Obura unfairly dismissed my LEGAL and EQUITABLE right to my said Motor vehicle.
- xxii. I aver that I have noT at any given time and I have never been the subject of any lien, or mortgage, pledge or collusion with the Defendants in regard to my PSV KCY 289C wrongfully attached by the 1st Respondents and I demonstrated on oath (without rebuttal from the 1st Respondent's Auctioneers) that I was never served with any Proclamation by the 1st Respondent's Auctioneers (Chador Auctioneers) as mandated by Rule 12 of the Auctioneer Rules prior to the unlawful seizure of my said vehicle subject of the Objection Proceedings in the Subordinate Court.
- xxiii. I verily much regret to note that the Learned Magistrate in her impugned Ruling did noT consider this stand-alone objection which I made at all, which as advised by my Advocates on record operated to NULLIFY the purported "attachment" of my PSV vehicle KCY 289C now sought to be sold off unlawfully.
- xxiv. In the end, I am persuaded that the Learned Magistrate Failed to make any findings on the totality of my objection proceedings before her in examining my legal right and/or equitable right to my PSV vehicle registration KCY 289C unlawfully attached.
- xxv. Mr. Harrison Kinyanjui Advocate has informed me that Order 22 Rule 53 of the Civil Procedure Rules which I had invoked mandated the learned Magistrate (with respect) to make such an unequivocal finding which she Failed to do.
- xxvi. I verily believe as advised by my advocates on record, that by reason of this failure a grave miscarriage of justice has occurred as the legal inquiry imposed on the Subordinate Court dealing with Objection Proceedings set under Order 22 Rule 53 of the Civil Procedure Rules on the legal OR equitable rights of the OBJECTOR in the unlawfully attached PSV vehicle was neither embarked upon nor met, to my detriment.
- xxvii. Incontestably, I do have an arguable appeal herein lodged on this score, hence the stay of execution is meritorious for the granting as prayed in the interim, otherwise my appeal will be rendered nugatory.
- xxviii. I was informed by Mr. Harrison Kinyanjui Advocate that the lack of service of the mandatory Proclamation on me by the 1st Respondent's said auctioneer as I have stated above was a stand-alone ground for the Subordinate Court to lift the subject attachment and declare the entire purported attachment process against my PSV vehicle registration KCY 289C illegal ab initio.
- xxix. With respect, I noted that the Learned Magistrate did not even consider this objection which I raised before her at all, nor did she make any finding (let alone a decision) on it, thereby provoking this appeal and my instant motion.
- xxx. I am persuaded that in the light of the foregoing, unless this Honourable Court intervenes the unlawful imminent execution against me will deprive me of my right to be heard under Article 50(1) of *the Constitution* of Kenya. I am persuaded further that this ground alone set out in my Memorandum of Appeal entitles the court herein to intervene and issue the say of execution orders ex debito justitiae.



- xxxi. I further noted that in spite of the Subordinate Court having directed the parties and to dispose of my stand Objection Proceedings dated 2nd September 2025 by way of written submissions for a Ruling thereon to be delivered on 29th September 2025 it was not so delivered and it was again postponed on november 3rd, 2025 with no decision thereon, and again adjourned to november 7th 2025.
- xxxii. More fundamentally I state that on 7th november 2025 I noted that the learned Magistrate orally dismissed my Objection stay of Execution granted under Order 22 Rule 53 of the Civil Procedure Rules, yet she did not render a Ruling in conformity with what my Advocates have informed me are the provisions of Order 21 Rule 3(1) of the Civil Procedure Rules that mandates the dating of the court's decision. I noted that what was uploaded on the CTS is not dated.
- xxxiii. My Advocates on record have informed me that it is therefore a nullity ab initio, and the Appellant is entitled to the benefit of the protection of the law Constitutionally – entrenched in Article 27(1) of *the Constitution* of Kenya.
- xxxiv. After my reading the said Ruling I noted that neither did the Learned Magistrate refer at all or (en passant) to my averments in my supplementary deposition in support of my objection proceedings which I had lodged before her, or even the authorities I had cited in my submissions in support.
- xxxv. I verily believe that to the said extent, the Learned Magistrate Hon. M. Obura (CM) clearly erred and did not accord me a Fair Trial, and a breach has thereby occurred of what my Advocates on record have informed me are the provisions of Article 25 (c) of *the Constitution* of Kenya entitling this court to intervene as I have sought to stay the consequent unlawful execution against me.
- xxxvi. In my proceedings before the subordinate court I demonstrated on oath before the Learned Magistrate as required by law in my stand objection proceedings and which she (with respect) Failed to consider in the end that:-
- a. I was not a party at all the said subordinate court proceedings and I have never been but was a bona fide objector and I have never been involved at any stage of the said suit.
 - b. I was a bona fide purchaser for value of my stated PSV motor vehicle, having purchased the same from the 4th Defendant (the alleged Judgment Debtor in the Subordinate Court) on a willing buyer and willing seller basis without my having notice of any proceedings in relation to the said vehicle.
 - c. The Plaintiffs Failed to demonstrate or prove any collusion between the judgement debtor and I.
 - d. I was at all material times without any notice or knowledge of the pendency of the said subordinate court proceedings and the 1st Respondent Decree holder never proved any nexus between the 2nd or 3rd or 4th Respondent and I such as would vitiate this position.
 - e. I was in actual physical possession and open use of my said PSV KCY 289C at least well over a year prior to the "Execution Order" impugned issued by the subordinate court; and



- f. I have no relation or connection howsoever with either the Plaintiffs (1st Respondent herein) or the 2nd or 3rd or 4th Defendant/Respondents herein in the said subordinate court case.
- g. The Decree holder's Auctioneer actually carjacked the subject vehicle from the driver and which crime was reported at the police station as set out in my depositions.
- xxxvii. All this evidence cited in the foregoing paragraph which I stated on oath in the subordinate court was not considered at all by the Learned Magistrate, hence she arrived at a wrong and unjust decision in not considering the merits of my Objection Proceedings thereby punishing me by the imminent deprivation of my lawful PSV vehicle KCY 289C unjustly should the unlawful execution proceed.
- xxxviii. Immediately thereupon, I applied for the subordinate court order dated 7th november 2025 in order for me to lodge my appeal before this Appellate Court and the same was delayed in delivery until today (21st november 2025) when the Order of stay of execution I had sought was dismissed necessitating my instant motion for stay of execution pending appeal to preserve the subject matter at hand.
- xxxix. I aver that the threatened unlawful sale of my subject PSV vehicle KCY 289C herein legally owned and by myself as demonstrated in my depositions would be a travesty of justice if allowed to proceed.
- xl. Indeed I demonstrated before the subordinate court that the said Auctioneer (Chador Auctioneers) did not conduct a basic or even any due diligence on the legal owner(s) of the subject PSV vehicle once he established that it was not in the judgement debtor's hands.
- xli. With respect, I aver that this burden lay on the 1st Respondents (Plaintiffs in lower court) and their Auctioneers who Failed to discharge the same as no Affidavit evidence was ever tendered by the Decree holder's auctioneer to negate or rebut my specific averments.
- xlii. I did fully complied with the statutory demands of lodging Objection Proceedings under Order 22 Rule 53 of the Civil Procedure Rules as I lodged a notice of Objection before the subordinate court in defense of my legal and equitable rights to my said PSV vehicle registration KCY 289C hence I verily believe that the court exercised its discretion wrongly to disbelieve my evidence on oath.
- xliii. Hence in the foregoing circumstances I aver that it is expedient to issue an order pending the hearing and determination of my annexed notice of Motion that there be a stay of execution and further execution of the Decree and all subsequent process in Voi Chief Magistrates Subordinates Court Case no. MCC no. 249 of 2022 and a there be a stay of the release to the 1st Respondents herein (Plaintiffs/Decree holders) or any other person of the purported proceeds of the unlawful sale of the Appellant's PSV vehicle KCY 289C until further Orders of this court.
- xliv. As I have indicated above as at today (21st november 2025) the subject motor vehicle REMAINS registered in my name. It is clear therefore that absent the court's intervention my appeal herein will be reduced into an academic exercise.
- xlvi. I now pray that this honourable court issues the orders herein sought and I make this deposition in support of my notice of Motion dated 21st november, 2025.
4. The first Respondent filed grounds of opposition dated 28th november 2025 as follows:-



- i. That on the issue of stay of execution pending appeal, it is the 1st respondents' take that the applicant has grounded his application on the ground that he has a legal and equitable right to the "unlawfully attached motor vehicle Registration Number KCY 289C" and yet the applicant purported purchase of motor vehicle in the first place had been caught up by the doctrine of Lis Pendens and therefore the application for stay had been made on a dicey legal situation. Therefore, quite clearly, the applicant application had been made without any substantive foundation or substratum to support or sustain the application. It was accordingly "dead on arrival".
- ii. That the application is grounded on no grounds and/or is groundless because, the ruling was duly uploaded on the CTS on the 7th november,2025. The same is dated the 7th november,2025 and was delivered in the presence of court Assistant and two counsels. The applicant ought to have exercised due diligence by accessing and downloading the ruling from the CTS. it is trite that mere absence during the delivery of the ruling does not in itself constitute a valid ground for stay of execution.
- iii. That now turning to the instant application, the 1st respondents need to disabuse some misconceptions that have been advanced by the applicant who clearly suppressed the very pertinent and material information from the court of law when he moved this Honourable court vide the application filed under certificate of urgency dated the 21st november,2025 (the instant application) and these are the pertinent material now disclose as an exercise of full candour.
 - a. Firstly, the applicant has withheld from the court the very material information that the ruling by the Honourable Chief Magistrate was delivered on the 7th november,2025. There is no reason why the applicant counsel did not attend court and yet that ruling date was taken in the presence of all the parties. The ruling was well reasoned and had been delivered by the Chief Magistrate court in exercise of its Judicial discretion and was delivered discretionarily and judicially.
 - b. The applicant is trying to insinuate that the ruling delivered on the 7th november,2025 was undated and yet the ruling was read on the 7th november ,2025. That ruling was neither a nullity nor fatal. The defect(if at all and there was none) is curable under Section 99 of the Civil Procedure Act.
 - c. That the above ruling was read in the presence of the parties who were present together with the court assistant.
 - d. That at all material times, the registered owner of the motor vehicle Reg no KCY 289C was in the name of the 4th respondent(East African Institute Of Certified Studies Ltd). The applicant is now in the instant application trying to introduce new evidence which he never provided to the Chief Magistrate Court by now purporting to be the Registered and legal owner, something new and was being introduced at the Appeal stage and for the first time and therefore quite unprocedurally introducing new evidence before the Appeal court without following the law. Such piece of evidence is totally irregular on record and is for expunging in !inane as a matter of right.
 - e. The applicant did not disclose to the court that the subject motor vehicle, KCY 289C had been sold on the 18th november,2025 via a public auction and now in the hands of a third party namely Stephen Maina Wamaitha and therefore there is nothing to stay at this stage. A court of law cannot stay what has already occurred. The evidence of the



sale has been exhibited in the affidavit of Kiprotich Toroitich showing evidence of the auction on the 18th november,2025 and that the sale/public auction was completed on the 18th november,2025 and the Certificate of Sale issued and signed by Chador Auctioneers on the 18th november,2025 long before the applicant filed the instant application on the 21st november, 2025.

- f. That the 1st Respondent Magdaliner Tabutany Kelwon and Kiprotich Toroitich have already received their share or proceeds arising from the sale and therefore for now the process is complete. It is to be noted that the 4th Respondent still owes to the 1st respondent the sum of Kshs. 5million(balance).
- g. That the applicant is seeking prayers 2, 3, 4 and 5 of the application dated the 21st november 2025 was clear "clear in his mind" that the motor vehicle Reg no. KM) 289C had been sold and Certificate of Sale issued by the Auctioneer and he then applies to the court of law to stay a process that has already taken place and therefore overtaken and in effect inviting court of law to act in vain at this static.

(h) That the applicant did not annex to the application, the impugned ruling dated the 7th november,2025 and yet he seeks substantive orders on what was not before court, effectively inviting a court of law to act in vacuo. A clear perusal at the application dated the 21st november,2025 has no annexure in form of the ruling dated the 7th november,2025 and yet that ruling is the one being appealed against and it was the basis of the seeking of the stay orders.

(i) That the subject motor vehicle was proclaimed by the Chador Auctioneers and sold via public auction. That was suppressed in an effort to show that there is an imminent execution. The execution was complete.

(iv) That the purported purchase of motor vehicle herein having been purportedly sold and purchased on the 8 May, 2025 after Chief Magistrate's court Judgement on the 25 March,2024 had been caught up by doctrine of Lis Pendens that is a doctrine common to the courts both of law and equity and rests upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendente lite were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendants alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to defeat by the same course of proceedings.

- (v) That it is trite law that every man is presumed to be attentive to what passes in the courts of justice of the State or sovereignty where he resides. Therefore, purchase made of a property actually in litigation pendente lite for a valuable consideration and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had notice and will accordingly be bound by the judgment or decree in the suit.
- (vi) That the doctrine of Us pendens often expressed in the maxim pendente lite nihil innovatur (during litigation nothing should be changed).
- vii. That the applicant application had been placed on nothing and was overtaken by events as the public auction of the motor vehicles had occurred on the 18th



november,2025 and therefore was already sold and transferred to a third party namely Stephen Maina Wamaitha who had taken control, ownership and possession of the motor vehicle Reg. no. KCY 289C following the Certificate of Sale issued by MIS Chadon Auctioneers on the 18th november,2025. The court cannot stay what has already occurred. The execution of the decree was a lawful and legal process and had been completed by the 18th november,2025 and there was nothing like the unlawful deprivation of the motor vehicle as contended by the applicant or at all.

- (viii) That as at the time of the public auction of the motor vehicle on the 18th november, 2025, there was no order of stay of execution or of any other order barring the sale.
- ix. That the issue of proclamation was raised and litigated before the Chief Magistrate court and it was demonstrated that the motor vehicle was lawfully proclaimed and at the time up to the auction it was registered in the name of East African Institute Of African Studies Ltd, the 4th Respondent herein (Judgment debtor).
- x. That overall the applicant application had not met the threshold for stay of execution under order 42, rule 6(1) and (2) of the Civil Procedure Rules and is therefore liable for striking out and/or dismissal with costs. At any rate the Chief Magistrate court did not issue any positive order on the 21st november,2025 ordering the auction of the motor vehicle Reg. no.KCY 289C. The court actually dismissed the applicant application. That was a negative order and therefore it was an order incapable of being stayed. That is well settled in law and there is no need to reinvent the law.
- xi. That at all events, the public auction have been conducted and concluded on the 18th november,2025, then there is no basis for invocation of Order 42, rule 6(1) and (2) g of the Civil Procedure Rules. The motor vehicle is in the hands of a third party who is not before court.
- (xii) That overall, the instant application is frivolous, incompetent, fatally defective and an abuse of the court process and ought to be dismissed with costs.

5. The 1st Respondent filed a Replying Affidavit as follows:-

- i. That I am an adult of sound mind and one of the legal representative of the estate of the late Elijah Kelwon Cheburet vide the grant of Letters of Administration Ad Litem in Chief Magistrate's Court at Voi Probate and administration Succession Cause no. E029 of 2022 in the matter of the estate of the late Elijah Kelwon Cheburet and duly authorized by my Co-1st Respondent above and hence competent to swear this affidavit.
- ii. That I have read the certificate of urgency by Harrison Kinyanjui Advocated dated the 21st day of november 2025. I have also read the Applicant application dated the 21st november 2025 and the supporting affidavit of Peter Gitiha Kamau dated the 21st november 2025 the annexures thereto and the 1st Respondent Counsel on record has also read to me the above certificate or urgency, the application and the supporting affidavit of Peter Gitiha Kamau all dated the 21st november 2025 and having understood the same I will respond to the same as follows:
- iii. That without rehashing the issues in this litigation, it is important for me to open by stating that the applicant (then the 1st Objector) application dated the 2nd September 2025 was dismissed in a ruling delivered by the trial Magistrate (CM) on the 7th november 2025.



- iv. That in that application the 1st Respondent filed the replying affidavit and/or responses in a blow by blow and demonstrated that the 1st objector/applicant was neither a bonafide purchaser of the motor vehicle registration no. KCY 289C and had no legal and equitable right to the same motor vehicle and that his purported purchase after Judgement in favour of the 1st Respondent was pursuant to a sale by the 4th Respondent herein after the Judgement in an effort to defeat the Judgement and that in all aspects, the Applicant purported purchase of the motor vehicle had been caught by the doctrine of lis pendens and therefore to avoid rehashing the issues I will annex herewith my replying affidavit dated the 17th September 2025 filed before the Chief Magistrate court Voi.
- v. That what is crystal clear is that the 4th Respondent through its director one Daniel Wakaba Macharia ID no. 21976237 and aware of the Judgement of the 25th March 2024 against them for Kshs. 5,392,412.00 issued on the 25th March 2024 purportedly or deliberately and surreptitiously “proceeded to sell the motor vehicle” to the applicant herein on the 8th May 2024.
- vi. That at the time of the purported sale, the motor vehicle Reg. no. KCY 289C was registered in the name of East Africa Institute of Certified Studies Ltd.
- vii. That around the same time after the Judgment of the 25th March 2024 in favour of the 1st Respondent, the 4th Respondent apart from selling motor vehicles also purportedly changed its name from East Africa Institute of Certified Studies Ltd to ICS College all these were geared to defeat the execution of Judgement herein.
- viii. That now turning to the instant application, I need to disabuse some misconceptions that have been advanced by the Applicant who clearly had suppressed the very pertinent and material information from the court of law when he moved this Honourable court vide the application filed under certificate of urgency dated the 21st november 2025 (the instant application) and these are the pertinent material now disclosed as an exercise of full candour.
 - a. Firstly, the applicant has withheld from this Honourable Court the very material information that the ruling by the Honourable Chief Magistrate Court was delivered on the 7th november 2025. There is no reason why the applicant counsel did not attend court and yet that date was taken in the presence of all the parties.
 - b. Secondly, the applicant is trying to insinuate that the ruling delivered on the 7th november 2025 was undated. The ruling was read on the 7th november 2025 in the presence of the parties. That record is there before this court.
 - c. Thirdly, that the above ruling was read in the presence of the parties who were present together with the court assistant as the annexure “KT2” above will attest to that.
 - d. Fourthly, that at the time the registered owner of the motor vehicle Reg no. KCY 289C was in the name of the 4th Respondent herein (East African Institute of African Studies Ltd). The applicant is now in the instant application trying to introduce new evidence which he never provided to the Chief Magistrate Court by now purporting to be the Registered and legal owner something new and was being introduced at the appeal stage and for the first time and therefore quite unprocedurally introducing new evidence before the Appeal court without following the law. Such piece of evidence is totally irregular on record and is for expunging in limine as a matter of right.



- e. Fifthly, the applicant did not disclose to this court that the subject motor vehicle had been sold on the 18th november 2025 via a public auction and now in the hands of a third party namely Stephen Maina Wamaitha and therefore there is nothing to stay at this stage. A court of law cannot stay what has already occurred. Annexed herewith and marked “KT6” find evidence of the public auction on the 18th november 2025 showing that the sale/public auction was completed on the 18th november 2025 and the Certificate of Sale issued and signed by Chador Auctioneers on the 18th november 2025. That at the time of the sale, there was no court order barring the same and secondly the motor vehicle was still in the names of East African Institute Of African Studies as it was before and as it was during the attachment. That is also clear in the applicant application dated the 21st november 2025.
- f. Sixthly, that the 1st Respondents Magdaliner Tabutany Kelwon and Kiprotich Toroitich have already received their share of proceeds arising from the sale and therefore for now the process is complete. It is to be noted that the 4th Respondent still owes to the 1st Respondent the sum of Kshs. 5 million (balance).
- g. Seventhly, that the applicant in seeking prayers 2, 3, 4 and 5 of the application dated the 21st november 2025 was “clear in his mind” that the motor vehicle Reg no. KCY 289C had been sold and completed by the Auctioneer and he then applied to the court of law to stay a process that has already taken place and therefore overtaken by events and in effect inviting a court of law to act in vain.
- h. Eighthly, that the applicant did not ever annex to the application, the impugned ruling dated the 7th november 2025 and yet he seeks substantive orders on what was not before court, effectively inviting a court of law to act in vacuo. A clear perusal at the application dated the 21st november 2025 has no annexure in form of the ruling dated the 7th november 2025 and yet that ruling is the one being appealed against and it was the basis of the seeking of the stay orders.
- ix. That I am advised by the 1st Respondents’ Counsel on record which advise I verily believe it to be true that it is trite law that it is well settled that a person who makes an ex-parte application to court, that is to say in the absence of the person who will be affected by that which the court is asked to do is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings and he will be deprived of any advantage by him. That is perfectly plain and requires no authority to justify. That having not been done as shown above (paragraph (viii) above) then the applicant’s interim orders are clearly for vacation and/or dissolution and the Honourable court is so invited to vacate it clear from the record.
- x. That the execution herein was as a result of a lawful process. There was nothing like unlawful execution of Warrants of Attachment. At any rate the applicant was not unlawfully deprived of his motor vehicle. He did not exercise due diligence while purporting to purchase a motor vehicle that was clearly being sold in order to defeat the court judgment.
- xi. That I am advised by the 1st Respondent’s Counsel on record which advise I verily believe it to be true that the purported purchase of motor vehicle had been caught up by doctrine of Lis Pendens, that is a doctrine common to the courts both of law and equity and rests upon this jurisdiction that it would plainly be impossible that any action or suit could be brought to



a successful determination, if alienation pendent lite were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendants alienating before the judgment or decree and would be driven to commence his proceedings de novo, subject again to defeat by the same course of proceedings.

- xii. That I am advised by the 1st Respondent's Counsel on record which advise I verily believe it to be true that every man is presumed to be attentive to what passes in the courts of justice of the State or sovereignty where he resides. Therefore, purchase made of a property actually in litigation pendent lite for a valuable consideration and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had notice and will accordingly be bound by the judgment or decree in the suit.
- xiii. That I am advised by the 1st Respondent's Counsel on record which advise I verily believe it to be true that the necessity of the doctrine of lis pendens in the adjudication of land matters pending before the court cannot be gainsaid, particularly for its expediency, as well as the orderly and efficacious disposal of justice.
- xiv. That I am advised by the 1st Respondent's Counsel on record which advise I verily believe it to be true that the doctrine of lis pendens often expressed in the maxim pendent lite nihilin novature (during litigation nothing should be changed).
- xv. That I am advised by the 1st Respondent's Counsel on record which advise I verily believe it to be true that the concept of the rule of law anticipates fine and fair adjudication. The law does not allow or encourage litigants to give rights which are still under dispute to others who are not litigants and in the process prejudice fellow litigants. That the doctrine is intended to avoid conflicts between parties to a suit and innocent purchasers and also to stop those who want to circumvent the court's jurisdiction by removing the subject matter from the court's grasp. The aim is accomplished by enforcing the decree against any person who acquires property the subject of litigation. That from the foregoing passages, the doctrine of lis pendens can be regarded as one that serves to stop the alienation of land subject to a civil suit by third parties during the pendency of litigation. It serves to preserve the subject matter of a suit pending the determination of the rights of the parties.
- xvi. That for the 1st Respondent's part, the motor vehicle Reg. no. KCY 289C was unlawfully and illegally "sold" by the 4th Respondent herein and its intention was to defeat the decree herein. The applicant averment that he purchased the motor vehicle from the NIC Bank Kenya was totally inaccurate. At all events, a perusal at the annexure "PGK2" annexed to the applicant affidavit (at pages 82 – 82) shows a sale agreement of the motor vehicle Reg. no. KCY 289C and the seller was Daniel Macharia ID no. 21976237 and when one checks further, it is crystal clear that Daniel Wakaba Macharia is the Director of the East Africa Institute of Certified Studies Limited. Further records held by the Business Registration Bureau regarding the Directorship of the East Africa Institute of Certified Studies

6. The Applicant filed a supplementary affidavit as follows:-

- i. I am the Appellant in this Appeal, having been the 1st Objector in the Objection Proceedings in the Subordinate Court, in respect of my vehicle PSV KCY 289C, and I have read and understood the Replying Affidavit of Kiprotich Toroitich, sworn on 28th november, 2025 and I wish to respond thereto as more specifically stated herein below.
- ii. I aver that many of the 1st Respondents' documents/exhibits were wholly illegible and I was not able to decipher as they were blank.



- iii. notwithstanding, in a nutshell summary of my rejoinder hereto I state that the 1st Respondent's entire Replying Affidavit Failed to address the following issues which in this rejoinder demonstrate the grave necessity for the Court to intervene and reverse the illegal "execution" against me:-
- a. the general conduct of the impugned execution process herein;
 - b. the non-issuance of the Proclamation by the auctioneer Chador Auctioneers to me;
 - c. the non-compliance with the relevant law governing the execution process against me as a bona fide purchaser for value of my PSV vehicle KCY 289C;
 - d. the issuance of the Court Order herein that was UNDATED dismissing my Objection Proceedings Order staying the execution impugned which the Auctioneer and the Plaintiffs ignored;
 - e. the fact that I remain the lawful registered proprietor of my PSV KCY 289C as per the NTSA records which I provided the Court with, vide my Supporting Affidavit to my instant Motion dated 21st november 2025.
- iv. I will now explicate the foregoing in the succeeding paragraphs. Save where expressly admitted herein below, I deny every allegation set out in the 1st Respondents'/Plaintiffs' said Replying Affidavit as though the same were set out herein verbatim.
- v. I noted that the "Order" issued in the Subordinate Court Voi CMCC no. 249 of 2022 proceedings dismissing my Objection Proceedings provoking my Appeal herein and a copy of which is produced by the 1st Respondent's Kiprotich Toroitich in his said Replying Affidavit as exhibit "KT 2" (at page 12 of the Replying Affidavit's bundle) agrees on the face of it with my stated ground of appeal herein, that the Ruling is indeed UNDATED and it is incontestable that it has no month indicated to verify when it is said to have been rendered by reason of which it is a nullity.
- vi. I have been informed by Mr. Harrison Kinyanjui Advocate that no application for leave to execute the purported Decree herein was made by the 1st Respondents or their Auctioneer giving rise to the unlawful attachment of my PSV vehicle KCY 289C, since rule 12 of the Auctioneer Rules (as explained to me by my said Advocates) mandatorily directs the auctioneer to file an application in court seeking leave of the Court to be allowed to attach any other movable properties of the judgement debtor pointed out by the decree holder. none was produced.
- vii. Further, and in regard to the cited Subordinate Court Order relied on by the Plaintiffs to levy the impugned executed process, and in rejoinder to the false and spurious allegations in paragraph 4 of Kiprotich Toroitich'S Replying deposition, I aver that there is no nexus between the Respondents in the Subordinate Court and I; we are noT related howsoever, neither are we joint business partners involving my said motor vehicle or neighbors. We do noT jointly own any asset, or even the subject motor vehicle KCY 289C.
- viii. Indeed the 1st Respondent in their entire Replying Affidavit:
- a. did noT demonstrate by means of any material evidence (other than speculative allegations) any nexus between the Respondents and I, or in relation to my subject motor vehicle KCY 289C;



- b. and as such the 1st Respondents cannot impose their perceptions of my said vehicle projecting the same as justification of the impugned execution.
 - c. they did not produce any material evidence demonstrating that they EVER wrote to me any single document alerting me on the pendency of these proceedings for them to allege that the subject vehicle was the subject of litigation;
 - d. They did not demonstrate that they had at any time prior to my purchase of the said vehicle placed a caveat with the NTSA on the logbook of the said vehicle KCY 289C;
 - e. They did not place any material before the Subordinate Court or even this Appellate Court that they invoked what my Advocates on record have explained the statutory provisions of Order 40 Rules 1 and 2 of the Civil Procedure Rules for an Order securing a Decree holder's legal position against unlawful sale of assets to evade lawful executions.
- ix. In response to the 1st Respondents' false allegations in paragraph 5 of the Replying affidavit of Kiprotich Toroitich, I state that I do not at all, nor was I EVER, aware of these proceedings at all and the 4th Respondent never informed me at all or ever that there was a pending suit before the Subordinate Court over the said vehicle.
 - x. In further reply to the stated averment, I aver that I was never at any time holding the said Motor Vehicle KCY 289C on behalf of the Respondents or to their benefit, and hence there was no legal or factual basis to hijack and steal my said PSV vehicle as the 1st Respondents/ Plaintiffs purported to do in the Subordinate Court.
 - xi. I noted that whereas in paragraph 5 and of their Replying Affidavit the Pt Respondents allege that they had allegedly established certain positive acts by the 4th Respondent herein (East Africa Institute of Certified Studies Ltd) allegedly to defeat execution of the Subordinate Court's judgement, there was no evidence presented to the Court connecting me to the said actions.
 - xii. Again I state that I was never aware at any time that the Subordinate Court proceedings relating to the 4th Respondent were pending until the unlawful theft of my PSV and my thereupon establishing of the purported "execution". Specifically, I aver that:-
 - a. There was no NTSA document of request of the ownership details in that regard produced by the Pt Respondent in their entire Replying Affidavit.
 - b. On their own, there is nothing on record by the Pt Respondents presented to this Appellate Court to show WHEN they allegedly conducted the purported "due diligence" on the ownership of the subject vehicle KCY 289C in the Objection Proceedings in the Subordinate Court;
 - c. There were no images, or any other evidence produced in the entire Replying Affidavit of the 1st Respondents that my motor vehicle subject of the proceedings herein was EVER in the possession, control or storage of the 4th Respondent at the material time of the impugned purported "attachment", or earlier AFTER legal ownership was made to me.
 - d. At any rate between 8th May 2024 alluded to in paragraph 5 of the 1st Respondent's Replying Affidavit when I purchased KCY 289C and the date of the purported unlawful "attachment" on 29th August 2025 (which is over a year), I was using the said



vehicle as a PSV and no one ever wrote to me or alerted me that there was any decision of the court levying a claim over the said vehicle.

7. The 1st Respondent, Kiprotich Toroitich, swore a Supplementary Affidavit in which he brings to the court's attention a material development from separate legal proceedings.
8. He deposed that in the Milimani Commercial Magistrates Court at Nairobi, a party named Stephen Maina Wamaitha successfully obtained court orders in case MCC CMISC/E2911/2025.
9. These orders compelled the National Transport and Safety Authority (NTSA) to remove a caveat and effect the forced transfer of Motor Vehicle Registration Number KCY 289C, a Toyota Hiace, into Wamaitha's name.
10. He further stated that, in compliance with that order, the NTSA has since processed and issued a new logbook for the vehicle in the name of Stephen Maina Wamaitha, a copy of which is also annexed to the affidavit.
11. The deponent said that neither he nor his co-1st Respondent, nor their lawyers on record, were involved as parties in the case filed by Wamaitha.
12. He concluded by clarifying that it was the purchaser of the motor vehicle who initiated those proceedings, and he swears that the contents of his affidavit are true to the best of his knowledge, information, and belief.
13. The parties filed written submissions as follows; The Appellant, Peter Gitih Kamau, submitted that he seeks to have his vehicle, a PSV Toyota Hiace registration number KCY 289C, returned to him.
14. He argues that the lower court's ruling, which allowed the vehicle to be seized and sold to satisfy a debt owed by other parties, was fundamentally flawed and illegal.
15. The central issue of his argument is that he is the legal and registered owner of the vehicle, having purchased it from the 4th Respondent in good faith without any knowledge of the ongoing court case or debt.
16. His vehicle was violently taken by auctioneers acting for the 1st Respondents without any prior legal warning or "Proclamation" as required by law.
17. This seizure was essentially a carjacking where his driver was assaulted and passengers were dumped.
18. He further contends that the ruling from the magistrate court is legally invalid because it is undated, which is a mandatory requirement for any court judgment or order.
19. The auction process that followed was also illegal, as it did not follow the proper steps outlined in the Auctioneers' Rules, such as providing a redemption period or conducting a legitimate public auction.
20. The Appellant fears that if the High Court does not intervene immediately, his vehicle will be permanently lost to third-party buyers, and the 1st Respondents, who have no known assets, will be unable to compensate him even if he wins his appeal.
21. He asserts that his appeal has a high chance of success because the lower court ignored key evidence, including his proof of ownership and the illegal nature of the seizure, and applied the law incorrectly.
22. In summary, the Appellant requests the High Court to stop all further actions regarding his vehicle, prevent its transfer to anyone else, and ultimately reverse the lower court's decision to prevent a grave miscarriage of justice and the irreversible loss of his property.



23. The 1st Respondents on his part submitted that the Appellant/Applicant's application for stay of execution pending appeal should be dismissed in its entirety.
24. The Respondent further submitted that the relief sought is both procedurally flawed and substantively untenable, as the execution process has already been lawfully completed, leaving nothing for the court to stay.
25. The Respondents contend that the application is founded on a critical non-disclosure of material facts.
26. They assert that the motor vehicle in question, KCY 289C, was lawfully attached and sold at a public auction on 18th november 2025, with a Certificate of Sale issued to a third-party purchaser.
27. Since the auction proceeds have already been released to the decree holders, the process is concluded, and a court cannot stay an event that has already transpired.
28. The Appellant's attempt to rely on a logbook generated on 21st november 2025—three days after the auction—is characterized as an impermissible attempt to introduce new evidence at the appellate stage without leave.
29. Furthermore, the submissions challenge the Appellant's claim of ownership.
30. They argue that at all material times up to the auction, the vehicle was registered in the name of the 4th Respondent (the Judgement Debtor).
31. The purported sale agreement of 8th May 2024, through which the Appellant claims to have acquired the vehicle, is presented as a transaction designed to defeat a court decree issued on 25th March 2024.
32. Consequently, the doctrine of *lis pendens* applies, imputing constructive notice of the pending litigation to the Appellant and rendering his purchase subject to the outcome of the case.
33. The Appellant, therefore, cannot be considered a bona fide purchaser for value without notice.
34. The Respondents also submit that the application fails to meet the threshold for granting a stay under Order 42 of the Civil Procedure Rules.
35. They argue that no substantial loss has been demonstrated, as the subject matter is no longer in the Appellant's possession and is now owned by a third party not before the court.
36. Additionally, the ruling appealed from, which dismissed the Appellant's objection proceedings, is characterized as a negative order incapable of execution and thus incapable of being stayed.
37. The Respondents maintain that the Appellant's only viable remedy, if aggrieved by the execution, is to file a separate suit for damages.
38. Finally, the Respondents fault the Appellant of lacking honesty and coming to court with unclean hands, citing failures to disclose the completed auction, the existence of a third-party purchaser, and the true dated nature of the lower court's ruling.
39. They urge the court to dismiss the application with costs, as it is groundless, an abuse of court process, and seeks to invite the court to act in vain.
40. I have carefully considered the application dated 21st november 2025, the grounds and affidavits in support and in opposition, together with the rival written submissions.
41. The central dispute before this Court is whether the Appellant/Applicant, Peter Gitiha Kamau, has satisfied the legal prerequisites for the grant of an order of stay of execution of the decree and



subsequent processes in Voi CMCC no. E249 of 2022 pending the hearing and determination of his appeal.

42. The following issues fall for determination in the Application dated 21st november 2025;
 - i. Whether the application has been overtaken by events by the alleged sale of the PSV motor vehicle Reg. no. KCY 289C to a third party,
 - j. Whether the Appellant has satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules; and,
 - k. Whether the Appellant's conduct and the nature of the orders sought warrant the exercise of the Court's discretion in his favour.
43. On the first issue of whether the application has been rendered nugatory by the sale of the motor vehicle, the 1st Respondents have presented a formidable argument that Motor Vehicle KCY 289C was sold at a public auction on 18th november 2025, three days before this application was filed, and that a Certificate of Sale was issued to a third party, Stephen Maina Wamaitha.
44. They contend that the execution process is therefore complete and that a court cannot stay what has already occurred.
45. While this assertion, if substantiated, would be fatal to the application, the Court must scrutinize the legality of the process that led to that sale.
46. The Appellant has raised profound and arguable challenges to the entire execution process.
47. He avers, and it is not conclusively refuted, that he was the registered proprietor of the vehicle as per NTSA records dated 21st november 2025.
48. More critically, he contends that the attachment of his vehicle was fundamentally illegal as it was effected without the mandatory proclamation as required by Rule 12 of the Auctioneers Rules.
49. The importance of a proclamation is not a mere technicality; it is a cornerstone of due process in execution, designed to notify a person in possession of property of an impending attachment and afford them an opportunity to be heard.
50. Failure to serve a proclamation where required renders an attachment illegal and liable to be set aside.
51. If the Appellant's assertions are true, that he was never served, that he was a stranger to the suit, and that the vehicle was violently taken, then the substratum of the subsequent auction is highly questionable.
52. A process rooted in an alleged illegality cannot easily found a claim that rights have crystallized to defeat an application for stay.
53. Furthermore, the 1st Respondents' own supplementary affidavit reveals that the purported third-party purchaser, Stephen Maina Wamaitha, has obtained separate ex parte orders from the Milimani Commercial Court to effect a forced transfer.
54. This development, far from cementing the finality of the sale, introduces a new layer of complexity and potential procedural irregularity.
55. It suggests a race to conclude dealings with the subject matter of a pending appeal, which this Court cannot condone.



56. The vehicle remains the central subject of the appeal, and its alienation to parties not before this Court during the pendency of this application would severely prejudice the Appellant and render his appeal nugatory.
57. Consequently, the argument that the application is overtaken by events is unsustainable at this interim stage without a full interrogation of the validity of the underlying execution process, which is precisely what the intended appeal seeks to challenge.
58. Turning to the second and core issue, the grant of stay pending appeal is governed by Order 42 Rule 6 of the Civil Procedure Rules.
59. The applicant must demonstrate that he will suffer substantial loss if stay is not granted, that the application has been made without unreasonable delay, and that he is willing to provide such security as the court orders.
60. On the element of substantial loss, the Appellant has made a compelling case. He deposes that he is the registered owner of the vehicle, which is his source of livelihood as a Public Service Vehicle.
61. If the vehicle is sold and the proceeds dissipated, and his appeal subsequently succeeds, he will be left with a hollow judgment against the 1st Respondents, whom he alleges have no known attachable assets.
62. This constitutes substantial loss which is the cornerstone of Order 42 Rule 6, The loss of a vital income-generating asset to a third party, against whom the Appellant may have no recourse, qualifies as such.
63. Regarding delay, the ruling complained of was delivered on 7th november 2025. The Appellant immediately sought leave to appeal and a stay from the lower court, which was dismissed on 21st november 2025.
64. He filed the present application on the same day, 21st november 2025. There has been no unreasonable delay.
65. On the issue of security, the Appellant has expressed his willingness to abide by any conditions set by the Court.
66. The subject matter itself, the motor vehicle, can be considered as security in situ.
67. The balance of convenience tilts heavily in favour of preserving the status quo.
68. Finally, on the arguability of the appeal and the Appellant's conduct, a perusal of the Memorandum of Appeal reveals numerous substantive and procedural grounds that are not frivolous.
69. These include the alleged failure to serve a proclamation, the lower court's alleged failure to consider his evidence as a bona fide purchaser for value without notice, and the issuance of an undated ruling.
70. An undated ruling or judgment, as alleged, raises serious procedural concerns about its validity.
71. While such a defect may be curable under Section 99 of the *Civil Procedure Act*, it is nonetheless an arguable point on appeal.
72. The principle that a party should not be condemned unheard is sacrosanct, as enshrined in Article 50 of *the Constitution*.
73. The Appellant's contention that his sworn evidence was not considered at all by the trial magistrate, if true, is a grave allegation that merits an appellate court's scrutiny.



74. The 1st Respondents' reliance on the doctrine of lis pendens is a substantive argument to be advanced at the hearing of the appeal, but it does not, at this interim stage, extinguish the Appellant's arguable case that the execution process against him was fundamentally flawed from inception.
75. In conclusion, after a consideration of the material before me, I find that the Appellant/Applicant has satisfied the requirements of Order 42 Rule 6 of the Civil Procedure Rules.
76. The balance of convenience favours the preservation of the subject matter to ensure that the appeal, if successful, is not an academic exercise. Justice demands that the status quo be maintained to allow the appeal to be heard on its merits.
77. Consequently, the application dated 21st november 2025 is hereby allowed in the following terms;
- h. That stay of execution be and is hereby granted in Voi Chief Magistrates Court Case no. CMCC no. E249 of 2022, pending the hearing and determination of the Appeal filed herein.
 - i. That an order be and is hereby issued prohibiting the registration of any change of ownership of Motor Vehicle Registration Number KCY 289C with the National Transport & Safety Authority (NTSA), and restraining the release of its logbook to any person, pending the hearing and determination of the Appeal.
 - j. That the National Transport & Safety Authority (NTSA) is hereby directed to place and maintain a caveat or inhibition against any dealings with the records of Motor Vehicle Registration Number KCY 289C to give effect to Order (2) above.
 - k. For the avoidance of doubt, any transfer, registration, or issuance of a logbook for the said vehicle effected pursuant to any order obtained after 21st november 2025, including but not limited to the orders in Milimani CMCC Misc. E2911/2025, is hereby suspended and shall not be acted upon until the final determination of this appeal or further orders of this Court.
78. Finally. in order to expedite this appeal and to ensure the ends of justice are not defeated, and for the preservation of the highly contested subject matter, and to prevent any party from gaining undue advantage or dealing with the vehicle pending appeal, Motor Vehicle Registration Number KCY 289C shall be impounded and held in neutral custody.
79. The Officer in Charge, Voi Police Station, is hereby directed to take possession of the said motor vehicle, wherever it may be located, and to store it securely within the Voi Police Station premises or an authorized government pound.
80. The Officer in Charge, Voi Police Station, shall file a report with the Deputy Registrar of this Court within seven (7) days confirming the vehicle's impoundment, its condition, and the location of storage.
81. He shall ensure the vehicle is kept under lock and key and is not released to any person except upon a further written order of this Court.
82. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED THIS 19th DAY OF DECEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-



Court Assistant: Mabishi/Millicent

..... for the Appellant/Applicant

..... for the 1st Respondent

