

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. CIVIL APPLICATION NO. E259 OF 2024**

STEPHEN MUTINDA KAMALO T/A EIG

STEP ENTERPRISES  
AUCTIONEERS.....APPLICANT/RESPONDENT

VERSUS

ANDREW KARIMI THIRIKU.....RESPONDENT/JUDGMRNT  
DEBTOR

AGNES WAMBUI  
NYAMBURA.....OBJECTOR/APPLICANT

**RULING**

**The Applicaiton**

1. This ruling relates to the Notice of Motion dated 18<sup>th</sup> November 2025 (the Application). It was filed by Agnes Wambui Nyambura (the Objector) under Section 1A, 1B and 3A of the Civil Procedure Act and Order 22 Rules 51, 52 and 53 of the Civil Procedure Rules.
2. The Application seeks the following orders against Stephen Mutinda Kamwalo (the Respondent):
  - (i) *Spent.*
  - (ii) *Spent.*
  - (iii) ***THAT the Honourable Court be pleased to grant an order lifting the attachment and execution***

***against the applicant's motor vehicle KCN 019T and order the immediate release of the Motor Vehicle to the Objector (sic).***

***(iv) THAT costs of this application be provided.***

3. The application is supported by grounds found on its body and in the Supporting Affidavit sworn by the Objector on 18<sup>th</sup> November 2025.
4. The Objector's case is that she is the beneficial owner of Motor Vehicle Registration No. KCN 019T which she bought from one Grace Gathoni Karimi, the administrator of the estate of Andrew Karimi Thiriku (deceased), pursuant to a sale agreement dated 30<sup>th</sup> November 2024 for which she paid Kshs 1,800,000 and took possession of; that the motor vehicle operates as a matatu under Lopho Sacco on route number 237 and that she took out an insurance cover with Amaco Insurance in her name for the period of December 2024 to the time of filing this application.
5. She stated, further, that on or about 17<sup>th</sup> November 2025, the motor vehicle was attached by Beta Recovery Auctioneers from the garage at Kamakis Ruiru for an alleged decree and warrant issued by the court in the suit

against Andrew Karimi Thiriku (deceased). She claims to be a stranger to this suit and that she was not notified of any liability.

6. Her apprehension is that the motor vehicle may be sold causing her loss. She also claims to be undergoing loss by continuing to pay workers while the motor vehicle is not operating.

### **The Replying Affidavit**

7. The Application is opposed by the Respondent through the Replying Affidavit sworn by Stephen Mutinda Kamwalo on 26<sup>th</sup> November 2025. The deponent has termed the application as incompetent, misconceived, bad in law, brought in bad faith and meant to delay or obstruct the course of justice. The Applicant gave the history of this case to the effect that the motor vehicle in question was initially attached in execution of the decree in Milimani CMCC No. E6530 of 2020 but was released on 11<sup>th</sup> December 2023 after the judgment debtor paid the decretal sum but failed to settle auctioneer's fees necessitating the execution.

8. The Applicant deposed, further, that the Objector only surfaced after the attachment of the subject motor vehicle despite her being aware of the proclamation notice. He has deposed that Grace Gathoni Karimi had not title to the subject motor vehicle and therefore he could not pass any title to the Objector; that there is no evidence that Grace Gathoni Karimi is the administrator of the estate of Judgment Debtor and that the sale agreement is incompetent for lack of stamp duty and registration.
9. The Applicant has urged this court to dismiss the application with costs.
10. The Objector has filed Further Affidavit sworn on the 28<sup>th</sup> November 2025 in which she has reiterated that she is the beneficial owner of the subject motor vehicle which she bought from Grace Gathoni Karimi, the administrator of the estate of Andrew Karimi Thiriku, deceased. She has claimed that Grace Gathoni Karimi had the legal authority to sell the said motor vehicle and that the law recognizes beneficial ownership through purchase and possession.

11. The Objector has reiterated that she has attached the Agreement for Sale dated 30<sup>th</sup> November 2024, Death Certificate of the deceased owner, the Logbook in the name of the deceased, a bank statement showing that she paid Kshs 1,800,000 towards the purchase of the motor vehicle and insurance policy as proof that she purchased the subject motor vehicle. She further stated that a search from NTSA on 2<sup>nd</sup> October 2025 shows that Grace Gathoni Karimi is the registered owner of the subject motor vehicle.
12. The Application was argued orally. Each party reiterated the contents of their respective affidavits. The Objector has reiterated that she is the beneficial owner of the subject motor vehicle which she bought from Grace Gathoni Karimi, the administrator of the estate of Andrew Karimi through a sale agreement and that she has attached documents to prove payment for the said motor vehicle. The Applicant, on the other hand, has maintained that Grace Gathoni has not attached any letters of administration to demonstrate that she is the administrator of the estate of the deceased.

## **Determination**

13. I have considered this application. The record of the court shows that the Applicant filed a Notice of Motion application dated 8<sup>th</sup> January 2025 seeking entry of judgment for Kshs 453,896.64 being the taxed costs as per the Certificate of Taxation dated 30<sup>th</sup> October 2024. That application was against Andrew Karimi Thiriku, the Judgment debtor. Failure by the Judgment debtor to settle that amount led to the proclamation and attachment of the subject motor vehicle, the subject of this application.

14. The judgment debtor was not alive at the time of the proclamation and attachment of the said vehicle. It has emerged that the judgment debtor passed away on 20<sup>th</sup> November 2022 as shown in the Certificate of Death attached to the Supporting Affidavit of the Objector. This court has not any reason, without evidence to the contrary, to doubt the death certificate. It would seem, therefore that at the time this court entered judgment against the judgment debtor on 7<sup>th</sup> April 2025, the judgment debtor was not alive.

15. The Objector has attached copies of Registration Certificates showing that Grace Gathoni Karimi was the registered owner of the subject motor vehicle and that ownership changed to Agnes Wambui Nyambura. Although I have not seen any evidence demonstrating that Grace Gathoni Karimi was the administrator of the estate of the judgment debtor, the documents from NTSA show that Grace Gathoni Karimi was the registered owner of the motor vehicle before it was sold to the Objector. I have no evidence to the contrary.

16. The Objector has also attached a Sale Agreement dated 30<sup>th</sup> November 2024 as proof of purchase of the motor vehicle in question from Grace Gathoni Karimi.

17. While I note that the motor vehicle in question was initially registered in the name of Andrew Karimi Thiriku, deceased, there is evidence to show that ownership changed to Grace Gathoni Karimi who sold the vehicle to the Objector in these proceedings. I have also noted that as at the time of seeking judgment as per the taxed costs through a Notice of Motion dated 8<sup>th</sup> January 2025, Andrew

Karimi Thiriku was already dead, having died on 20<sup>th</sup> November 2022, as shown in the copy of the death certificate dated 6<sup>th</sup> March 2023.

18. It is clear from the documents availed to the court that the Applicant was seeking execution from a deceased person. The Applicant has not controverted the evidence of the Objector that she is the beneficial owner of Motor Vehicle Registration No. KCN O19T. In the absence of evidence to the contrary, I have no reason to doubt the evidence presented by the Objector.

19. Consequently, I find that the Notice of Motion dated 18<sup>th</sup> November 2025 is merited and is hereby allowed with costs. The Objector has demonstrated that she is the beneficial owner of the subject motor vehicle. The Respondent is at liberty to pursue the estate of the deceased for execution of the decree. For the avoidance of doubt, the following orders are granted:

(a) ***That an order is hereby issued lifting the attachment and execution against the Objector's Motor Vehicle Registration No. KCN 019T.***

- (b) ***That an order is hereby issued that Motor Vehicle Registration No. KCN 019T shall, forthwith, be released to the Objector, Agnes Wambui Nyambura.***
- (c) ***That costs of the application shall be paid to the Objector.***

20. It is so ordered.

**Dated, signed and delivered this 19<sup>th</sup> day of January 2026.**

**S. N. MUTUKU  
JUDGE**

**In the presence of:**

1. Mr. Moriasi for the Objector.
2. Mrl Kamwalo the Respondent
3. N/A by the Judgment Debtor