

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION  
ACEC SUIT NO. E037 OF 2024

ASSETS RECOVERY AGENCY.....APPLICANT

-VERSUS-

PATRICK NDURI MWANGI.....1<sup>ST</sup>

RESPONDENT

DARSON TRADING LIMITED.....INTERESTED

PARTY

**RULING**

This ruling relates to the respondent's application dated 12<sup>th</sup> September 2025 which seeks the following orders;

- a. This application be certified urgent and be heard on a priority basis.
- b. This Honourable Court be pleased to compel the release of motor vehicle registration number KDL 886J held by the 1<sup>st</sup> respondent to the applicant.
- c. This Honourable Court be pleased to compel the Director of National Transport and Safety Authority to lift the caveat registered against motor vehicle registration number KDL 886J.
- d. There be no orders as to costs of this application.

I note that in prayers, the Asset Recovery Agency is referred to as the respondent while Patrick Nduri Mwangi is referred to as the applicant. This is so because the respondent in the main application was the applicant in the current application and vice versa. For avoidance of doubt and confusion, I will in this ruling refer to the parties as they appear in the original application that is; Assets Recovery Agency as the applicant and Patrick Nduri Mwangi as the respondent.

The application follows this court's judgment dated 31<sup>st</sup> July 2025 in which I dismissed the applicant's application for forfeiture of motor vehicle registration number KDL 886J. The application is supported by affidavit of the respondent sworn on 12<sup>th</sup> September 2025. The respondent alleges that there has been no appeal filed after the judgment yet the applicant has failed to release the motor vehicle to him and this has made him incur losses as the vehicle was meant for business. He avers that the vehicle continues to lose value and he will consequently suffer irreparable damages unless the application is granted. The interested party has through an affidavit sworn by Nicholus Ngoli Inyangala, its operations and sales manager on 19<sup>th</sup> September 2025 supported the application by stating that, it is in the interest of justice that the application be granted.

In opposition to the application, the applicant's investigator Mr. Martin Samburumo swore an affidavit dated 6<sup>th</sup> October 2025. Martin avers that the preservation orders obtained in this court's miscellaneous application number E031 of 2024 prior to the filing of this suit were gazetted on 2-08-2024 and remained in forced pending the hearing of the application. He added that the applicant filed a Notice of Appeal against my judgement on 1-08-2025 and the record of appeal vide civil appeal number E750 of 2025 on 15-09-2025, which record of appeal was served upon the applicant and the interested party on 19<sup>th</sup> September 2025. The applicant adds that the appeal is still pending for hearing and urges this court to

decline the application because granting the same would risk the transfer or disposal of the vehicle making it out of reach of the applicant.

The application was argued by way of written submissions which I have gone through. When I delivered the judgment, I granted a stay of the same for thirty days. The said period lapsed on 30-08-2025. The applicant filed a Notice of Appeal on 1-08-2025 which was within the period of stay which means that the preservation orders were subsisting as at the time the Notice of Appeal was filed.

Section 97 of Proceeds of Crime and Anti-Money Laundering Act (hereinafter referred to as 'POCAMLA') provides as follows;

*'Any preservation order and any order authorizing the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order under section 92(1) shall remain in force pending the outcome of any appeal against the decision concerned.'*

The purport of the above Section is that where an appeal is filed, the preservation orders would automatically remain in force until the appeal is determined. The respondent has argued that the appeal was filed on 15-09-2025 when the period of stay I granted on 31-07-2025 had lapsed and the same was an afterthought after this application was filed. This argument lacks merits because, for purposes of stay of execution a notice of appeal is considered as an appeal by virtue of Rule 6(4) of Order 42 of the Civil Procedure Rules which provides that;

*'For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.'*

What the above means is that, once a notice of appeal has been filed, it would be in order for a party to make an application for stay of execution pending hearing of the intended appeal. The appeal in my view was filed in time as Rule 84 of the Court of Appeal Rules requires that a memorandum and record of appeal be filed within sixty days from the date a notice of appeal is filed. In that regard, although it is not for this court to determine the competency of the appeal, the fact is that an appeal against my judgment subsists and by virtue of Section 97 of POCAMLA, the preservation orders dated 17<sup>th</sup> July 2024 in this court's miscellaneous civil application number E031 of 2024 remains in force until the appeal is heard and determined. While addressing the purport of Section 97 of POCAMLA in *Assets Recovery Agency v Njuguna; Interdunia Mombasa Limited (Interested Party) [2025] 12851 (KLR)*, I held and I still hold the same position that;

*'This Section in my view qualifies the condition for due performance of the decree as it seeks to have the assets which are subject of the decree remain preserved pending the hearing and determination of the appeal. For such preservation orders to be said to subsists the status quo must remain that the assets in question remain in control of the court. This is a substantive Section of the law which this court is bound to enforce.'*

In conclusion, I find the application dated 12<sup>th</sup> September 2025 is lacking merits and the same is hereby dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this **30<sup>th</sup>** day of **January** 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Wambua for the applicant, Miss Kamau for the respondent and Mr. Osoro for the interested party.

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