



REPUBLIC OF KENYA



KENYA LAW
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**Kaumbuthu v Ngari (Civil Appeal E070 of 2025)
[2026] KEHC 354 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E070 OF 2025
RM MWONGO, J
JANUARY 21, 2026**

BETWEEN

JOEL NAMU KAUMBUTHU APPLICANT

AND

SOPHIA GATAKA NGARI RESPONDENT

RULING

1. The applicant filed a notice of motion dated 19th August 2025 seeking orders that:
 1. Spent:
 2. The Honourable Court be pleased to order the Respondent whether by herself, agents, servants or assigns from proceeding with the sale, auction and/or transfer of Motor Vehicle Registration No. KCW 468R in the first instance and/or interim;
 3. The Honourable Court be pleased to order the Respondent whether by herself, agents, servants or assigns from proceeding with the sale, auction and/or transfer of Motor Vehicle Registration No. KCW 468R pending the inter partes hearing of this Application;
 4. The Honourable Court be pleased to order the Respondent whether by herself, agents, servants or assigns from proceeding with the sale, auction and/or transfer of Motor Vehicle Registration No. KCW 468R pending the hearing of this Appeal;
 5. The Honourable Court be pleased to issue an order for stay of execution of the judgment issued by Hon. J. W. Gichimu in Runyenjes CMCC E001/2023 on 30th November 2023 pending the hearing and determination of this Appeal; and
 6. The costs of this application be in the cause.
2. The application is supported by the grounds set out on its face and in the supporting affidavit thereof.



3. The applicant deposed that it is necessary that an order for stay of execution be granted since there is a moratorium against the appellant's insurer - Invesco Assurance Co. Ltd - for 6 months starting 14th February 2025. The appellant's motor vehicle has already been slated for auction to satisfy the decree of the trial court. He stated that if the vehicle is sold, the appeal will be rendered nugatory. That so far, the vehicle is still in his name, hence the prayers sought are valid.
4. The respondent, through her replying affidavit termed the application herein as an abuse of the court process since a similar application had already been dismissed by the trial court. She stated that with no stay of execution order in place, the respondent went on to auction the motor vehicle in question; that through the auction, an amount of Kshs.600,000/= was realised. Further, that the appellant will not suffer any loss if the order for stay is not granted since execution has already taken place. She stated that the moratorium against the appellant's insurer is not a bar for execution and she relied on the case of *Maitima v Muchui* (Civil Application E098 of 2025) [2025] KECA 1430 KLR.

Parties' Submissions

5. The court directed that the application be canvassed by way of written submissions.
6. In his submissions, the applicant relied on the cases of *Chris Munga N. Bichage v Richard Nyagaka Tongi & 2 others* [2013] KECA 141 (KLR), *Stanley Kangethe Kinyanjui V Tony Ketter & 5 others* [2013] KECA 378 (KLR), *University of Nairobi v Ricatti Business of East Africa* [2020] KECA 463 (KLR), *Jaber Mohsen Ali & another v Priscillah Boit & another* [2014] KEELC 132 (KLR) and *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR). He argued that he has satisfied the requirements of Order 42 Rule 6 of the Civil Procedure Rules, thus he should be granted the orders as prayed. That there was a moratorium against his insurer at the time of filing the application and it was meant to bar execution.
7. The respondent relied on the cases of *James Wangalwa & Another v Agnes Naliaka Cheseto* (supra), *Maitima v Muchui* (supra), *Wycliffe Otieno Onyango v Statutory Manager Blueshield Insurance Co. Ltd & 2 others* [2021] KEHC 8637 (KLR) and *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2006] KECA 206 (KLR). She argued that the extended moratorium on the applicant's insurer did not stop execution as has been held by the courts. She stated that no security for costs has been offered by the applicant for due performance of the decree. That no other prerequisites for granting a stay order have been demonstrated.

Issue for Determination

8. The issue for determination is whether an order of stay of execution should be made.

Analysis and Determination

9. Stay of execution is governed by Order 42 Rule 6(2) of the Civil Procedure Rules as follows:

- “(2) No order for stay of execution shall be made under subrule (1) unless—
- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.” [Emphasis added]



10. Was the application for stay filed without delay? The impugned judgment was delivered on 30th November 2023. The applicant had filed a similar application before the trial court and it was dated 29th April 2025. In it, he raised the issue of the moratorium against his insurer as a basis for his application. The trial court delivered a ruling on 17th July 2025 dismissing the application. That stay application was filed 1½ years after the impugned judgment, which delay is clearly inordinate. The application herein was filed after the trial court had dismissed the application before it which was filed too late in any event. Therefore, the application herein is also held to have been filed after a long delay after the impugned judgment.
11. The applicant has claimed that the vehicle is yet to be transferred to another person hence stay of execution is necessary. On the other hand, the respondent stated that the vehicle had already been sold at an auction and the money for the decretal sum was already realised. The applicant has referred to the moratorium against his insurer but this argument was countered by the respondent citing the case of *Maitima v Muchui* (supra). In that case, it was settled that a moratorium against an insurance company is no bar for execution by a third party against the insurer or the insured.
12. The applicant also failed to demonstrate that he would suffer substantial loss if the order for stay is denied. The loss envisioned is that his car, which was sold at the auction to satisfy the decretal amount, would be transferred to the buyer. This is the normal course of execution which is not an unlawful process.
13. Similar sentiments were held by Gikonyo J in the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* (supra) where it was held that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.” [Emphasis added]
14. In this case, if the apprehension of execution is the only ground. The applicant has failed to demonstrate what substantial loss he would suffer, loss that is likely to render his intended appeal nugatory.
15. The third element for consideration is whether security has been availed for due performance. The applicant has not offered any security for performance provided under Order 42 Rule 6(2)(b) of the Civil Procedure Rules. Having offered nothing, there is nothing to secure due performance.

Disposition

16. Accordingly, there is no basis for granting stay of execution. The application is therefore hereby dismissed with costs.
17. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 21ST DAY OF JANUARY, 2026.



R. MWONGO

JUDGE

Delivered in the presence of:

1. Mbugua for Respondent
2. No Representation for Ms. Maina
3. Now Present Agnes Maina for Applicant
4. Francis Munyao - Court Assistant

