



Scania Credit Solutions (PTY) Ltd & another v Crown Bus Services Limited (Civil Appeal E849 of 2024) [2026] KEHC 2039 (KLR) (Civ) (19 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E849 OF 2024

JM CHIGITI, J

FEBRUARY 19, 2026

BETWEEN

SCANIA CREDIT SOLUTIONS (PTY) LTD 1ST APPELLANT

**GG KAMIRI T/A WESTMINISTER COMMERCIAL AUCTIONEERS 2ND
APPELLANT**

AND

CROWN BUS SERVICES LIMITED RESPONDENT

JUDGMENT

1. It is the Appellants' case that the learned trial Magistrate's Ruling that was delivered on 25th July 2024, is bad in law and ought to be set aside.
2. Driven by this, the Appellants lodged the memorandum of appeal dated 25th July 2024 wherein they seek orders that:
 1. The Appeal has merit and is allowed.
 2. The Ruling of the Magistrate Court delivered on 25th July 2024, in Nairobi Chief Magistrates Court Civil Case No. MCCCmisc/E1064/2024 (Gg Kamiri T/A Westminister Commercial Auctioneers & Scania Credit Solutions (Proprietary) Limited v Crown Buses Limited) allowing the Respondent's Application dated 11th July 2024, be set aside in its entirety.
 3. The costs of this Appeal and the proceedings before the Magistrate's Court be awarded to the Appellants herein.
3. The Appellants raise the following grounds of appeal:



1. The learned Magistrate erred in law by allowing in its entirety the Respondent's Application dated 11th July 2024 and filed in Nairobi Chief Magistrates Court Civil Case No. MCCCmisc/E1064/2024, based on a curable procedural technicality in violation of Article 159(2)(d) of *the Constitution* of Kenya, 2010.
 2. The learned Magistrate erred in law by failing to appreciate and consider that the Orders issued on 12th July 2024, did not provide for express timelines in respect of filing of a Response to the Respondent's Application dated 11th July 2024.
 3. The learned Magistrate erred in law and failed to exercise his discretion judiciously by declining to grant the Appellants' prayer for enlargement of time to file a Response and stay of execution pending appeal, despite the obvious and significant prejudice that would follow the Appellants in the event of compliance with the impugned orders coupled with the very unreasonable and stringent timelines for compliance.
 4. The Learned Magistrate erred in law by failing to accord the Appellants the right to be heard and denying the Appellants due process and a fair hearing on the merits of the Application and as such violated their right under Article 50 (1) of *the Constitution* to a fair trial.
 5. The learned Magistrate erred in law by failing to find and hold that he lacked jurisdiction to issue an order for reinstatement of the 1st Appellant's repossessed assets as the impugned proceedings in Nairobi MCCCmisc/E1064/2024, as the repossession arose out of separate proceedings being, Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers) and Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers).
 6. The learned Magistrate erred in law by illegally, irregularly and without jurisdiction reviewing and/or sitting on appeal of the orders of the court in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers), which court allowed the repossession of the 1st Appellant's assets.
 7. The learned Magistrate erred in fact and law by failing to consider that as at the time of repossession of the Appellant's assets the interim orders issued by the High Court in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers) had lapsed on 10th June 2024 and therefore the Appellants had every right to proceed with the repossession of the motor vehicles.
 8. In any case, the leaned Magistrate erred in law by failing to consider matters that he ought to have considered and considering matters that he ought not to have considered in making his impugned decision of 25th July 2024, and thereby arrived at a decision that was plainly wrong.
4. It is their case that in allowing the Respondent's Application dated 11th July 2025, without according them the right to be heard violated the 1st Appellant's constitutional right to fair trial as stipulated under Article 50 (1) of *the Constitution* of Kenya, 2010.
 5. It is their case that the Trial Court denied the 1st Appellant an opportunity to disclose material facts and shed more light to the issues arising from the said application, particularly;



- a. The ownership of the motor vehicles, contractual obligations and nature of relationship between the 1st Appellant and Respondent in light of the Financial Lease Agreements entered into between the parties.
 - b. The Orders by Hon. Micheni (as she then was) in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) that resulted in the repossession, and
 - c. The relevance of the Orders issued by the High Court in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) considering that they had lapsed on 10th June 2024 and the same had not been extended.
6. Reliance is placed in the Court of Appeal in *Patriotic Guards Ltd v James Kipchirchir Sambu* [2018] KECA 799 (KLR) where the court stated as follows;

“The Appellant has also contended that the judgment of the Court which directly affected it, was in breach, not only of the law, but also of *the Constitution* in so far as it condemned him without an opportunity to be heard and in breach of the right to a fair hearing guaranteed by Article 50(1). There is no need to restate the importance of a fair trial as guaranteed by *the Constitution*. The right to a fair trial remains at the heart of any judicial determination and courts should endeavor to protect and uphold the same. It is a cardinal rule and it emanates from the principle of natural justice. In *M K v M W M & another* [2015] eKLR it was reiterated that;

“The courts of this land have been consistent on the importance of observing the rules of natural justice and in particular hearing a person who is likely to be adversely affected by a decision before the decision is made. In *Onyango V. Attorney General* (1986-1989) EA 456, Nyarangi, JA asserted at page 459:

“I would say that the principle of natural justice applies where ordinary people who would reasonably expect those making decisions which will affect others to act fairly.”

At page 460 the learned Judge added:

“A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at.”

7. Reliance is also placed in the case of *Adan Yare Hassan & Fatuma Abdulkadir v Habiba Ali Welai & 2 Others* (2023) KEHC 2922 (KLR) where it was held as follows;

“The court, in *Pinnacle Projects Limited v. Presbyterian Church of East Africa, Ngong Parish & another* [2018] eKLR, had the following to say on Article 50 with respect to fair trial principles in civil cases: “While the wording of Article 50 of *the Constitution* on the right to a fair hearing prima facie seems to focus on criminal trials it’s not lost that fair trial in civil cases includes: the right of access to a court, the right to be heard by a competent independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence, the right to legal representation, the right to be informed of the claim in advance before the suit is filed, the right to a public hearing, and the right to be heard within a reasonable time.”

It would also be the case where the trial court failed to allow a party a chance to be heard on their defense as that would amount to a miscarriage of justice and amiss trial, and such would



be a proper case to remand the matter to the trial court for the party to be properly heard (See Jane Murugi Karanu v. Gabriel Gikonyo Ndirangu [2008] eKLR). Where a trial court or tribunal determined a matter without giving an opportunity to either party to be heard (See Duncan Kamau Kiriro v. Japheth P. Kimotho [2013] eKLR.)” (Our Emphasis)

8. It is the Appellants’ case that the Learned Magistrate erred in law by allowing in its entirety the Respondent’s Application dated 11th July 2024 based on a curable procedural technicality in violation of Article 159(2)(d) of *the Constitution* of Kenya, 2010.
9. According to the Appellants this error is particularly significant given that Order No. 2 of the Order dated 12th July 2024 expressly barred the sale—by private treaty or public auction—or any form of pledge of the PSV Buses registration number KCX 074G, KCX 075G and KCX 077G.
10. They are troubled that the Magistrate denied the 1st Appellant a reasonable opportunity specifically to respond. They argue that 3 days, to file its response particularly unjust given that the 1st Appellant was served with the Respondent’s Application dated 11th July 2024, on 15th July 2024 and only retained Counsel on 18th July 2024.
11. In any case, according to them, there were no timelines imposed for filing a response, and even if there were, the court should have exercised its discretion judiciously by allowing the brief extension period requested.
12. Reliance is placed in Court of Appeal in James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] KECA 470 (KLR) stated as follows: -

“As regards Athman’s application, which the Appellants contend was served out of time, the consent order required him to file the application within 30 days from 18th December 2012. He filed the application on 19th January 2013. The application was out of time by two days only. It seems to us that this was such a minor infraction that the learned judge decided to overlook it. Under the overriding objective spelt out in section 3 of the *Environment and Land Court Act*, the principal objective of that statute is to enable the court to facilitate just, fair, expeditious, proportionate and accessible resolution of disputes. As Ouko, JA observed in Nicholas Salat v IEBC & 6 Others, CA (Application) No 228 of 2013,) the general trend, following the introduction of the overriding objective in various statutes as well as Article 159 of *the Constitution*, is that the courts strive to sustain rather than strike out pleadings on purely technical grounds. The learned judge explained:

“Deviations from and lapses in form and procedures which do not go to the jurisdiction of the Court, or to the root of the dispute or which do not at all occasion prejudice or miscarriage of justice to the opposite party ought not be elevated to the level of a criminal offence attracting such heavy punishment of the offending party, who may in many cases be innocent since the rules of procedure are complex and technical. Instead, in such instances the Court should rise to its highest calling to do justice by sparing the parties the draconian approach of striking out pleadings. It is globally established that where a procedural infraction causes no injustice by way of injurious prejudice to a person, such infraction should not have an invalidating effect. Justice must not be sacrificed on the altar of strict adherence to provisions of procedural law which at times create hardship and unfairness.”



13. It is regrettable according to the Appellants that the trial Magistrate, in granting the Respondent's Application, prioritized strict compliance with procedural rules over substantive justice, thereby infringing upon the 1st Appellant's right to be heard.
14. The Appellants submit that the Learned Magistrate erred in law by illegally, irregularly and without jurisdiction reviewing and/or sitting on appeal of the orders of the court in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers), which court allowed the repossession of the 1st Appellant's assets.
15. The Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, contended that;

“ A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law.
16. It is their case that the Learned Magistrate failed to consider that he lacked jurisdiction to issue an order for reinstatement of the 1st Appellant's repossessed assets in Nairobi MCCCmisc/E1064/2024, as the repossession arose out of separate proceedings being, Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers) and Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers).
17. In denying the Appellants an opportunity to be heard and allowing the Respondent's submissions in its entirety the Learned Magistrate failed to take into consideration relevant facts hence arriving at a decision that was plainly wrong according to the applicants.
18. The Ruling delivered by the Trial Court on 25th July 2024 was rendered without jurisdiction, and amounted to an illegal and irregular exercise of judicial authority, in that the Court purported to review and/or sit on appeal against the subsisting orders issued in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers), which orders had lawfully authorized the repossession of the 1st Appellant's assets.
19. The Learned Magistrate failed to duly appreciate that the 2nd Appellant's Application dated 13th June 2024, specifically sought orders for police assistance in the repossession of the subject motor vehicles.
20. The Application sought the following reliefs:
 1. That this matter be heard in the first instance ex-parte.
 2. That this Honourable Court be pleased and do hereby issue orders directing the OCS Industrial Area Police Station to maintain law and order during the attachment and repossession of the proclaimed Motor Vehicles at the Respondent's premises along Lusaka Road, Industrial Area by Westminister Commercial Auctioneers, being Registration Numbers KCX 074G, KCX 076G, KCX 077G, KCX 075G from Crown Bus Services Limited by Westminister Commercial Auctioneers for purpose of recovering 47, 831.39 USD due and owing to Scania Credit Solutions (PTY) Limited
 3. That this Honourable Court be pleased and do hereby issue orders directing the OCS of any Police Station immediate to any other private premises within the Republic of Kenya



to maintain law and order during the attachment and repossession of the proclaimed motor vehicles by Westminister Commercial Auctioneers, being Registration Numbers KCX 074G, KCX 076G, KCX 077G, KCX 075G by Westminister Commercial Auctioneers from Crown Bus Services Limited to recover 47, 831.39 USD due and owing to Scania Credit Solutions (PTY) Limited

4. That the costs for this application be in the cause.
21. The Trial Court on 14th June 2024 subsequently issued its Orders on the aforesated Application. The said Orders only provided for the police assistance in maintaining law and order during the attachment and repossession. The Order dated 14th June 2024 particularly provided as follows:
 - a. That an order issues directing the OCS Industrial Area police station to maintain law and order during the attachment and repossession of the proclaimed Motor Vehicles at the Respondent's premises along Lusaka Road, Industrial Area by
 - b. Westminister Commercial Auctioneers, being Registration Numbers KCX 074G, KCX 076G, KCX 077G, KCX 075G from Crown Bus Services Limited by Westminister Commercial Auctioneers for purpose of recovering 47, 831.39 USD due and owing to Scania Credit Solutions (PTY) Limited
 - c. That an order issues directing the OCS of any Police Station immediate to any other private premises within the Republic of Kenya to maintain law and order during the attachment and repossession of the proclaimed motor vehicles by Westminister Commercial Auctioneers, being Registration Numbers KCX 074G, KCX 076G, KCX 077G, KCX 075G by Westminister Commercial Auctioneers from Crown Bus Services Limited to recover 47, 831.39 USD due and owing to Scania Credit Solutions (PTY) Limited
 - d. That the costs of this application be in the cause
 22. The Appellants submit that the 2nd Appellant's Application dated 13th June 2024, did not seek for repossession orders of the subject motor vehicles and further, the subsequent Court orders did not provide for any repossession orders.
 23. As such, the Learned Magistrate allowing the Respondent's Application dated 11th July 2024 in its entirety, particularly Prayer No. 5 purported to review and/or sit on appeal against the repossession orders made in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v. Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers). The said Prayer No. 5 provided as follows;

“That upon the grant of Order No. 4 herein, GG Kamiri t/a Westminister Auctioneers and Scania Credit Solutions (Proprietary) Limited do forthwith, and not later than 24 hours from the service of this Order upon them, return to the premises of Crown Bus Services Limited the Applicant's (Crown Bus Services Limited) PSV Buses KCX 074G, KCX 075G, KCX 076G and KCX 077G, and at their own expense, and in the same condition in which the said PSV buses were, as at 10th July 2024.”
 24. They argue that the Learned Magistrate failed to appreciate and consider that the Order dated 14th June 2024, was strictly confined to facilitating police assistance for the maintenance of law and order during the attachment and repossession of the subject motor vehicles.
 25. The Trial Court was limited to determining the specific issue of whether police protection should be set aside.



26. It lacked jurisdiction to issue extraneous orders, particularly those directing the return of motor vehicles to the Respondent, as such matters were not the subject of the 2nd Appellant's Application dated 13th June 2024.
27. It is their case that the issue of repossession or return of the motor vehicles ought to have been addressed by the Court in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v. Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) and/ or the pending Appeal proceedings in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers).
28. Hon. Cherere J in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) held that the subject motor vehicles had been lawfully repossessed and were only returned subject to the impugned decision of 25th July 2024, delivered by the Learned Magistrate. The Appellate Court particularly held as follows;

“The Appellant has not proved such injury. On the contrary, the 1st Respondent has demonstrated that the vehicles in question were repossessed only after lawful orders were discharged, and that they were subsequently released to the Appellant following the ruling of 25th July 2024. Moreover, there is no evidence before the Court that the vehicles are at imminent risk of sale or permanent loss. Moreover, there is no evidence that the 1st Respondent, is incapable of compensating the Appellant should the appeal succeed.” (Our Emphasis)

29. In Michael Kasha Mwavula v Robert Waweru T/A Antique Auctioneers Agencies & Momentum Credit Limited (Civil Appeal E374 of 2023) [2024] KEHC 5988 stated as follows;

“In the case of Malawi Railways Ltd v Nyasulu [1998] MWSC 3, Malawi Supreme Court of Appeal stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled “The Present Importance of Pleadings” published in [1960] Current Legal Problems at p 174 whereof the learned author posited that:

As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadingsfor the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”



30. In *Adam Kahindi v Sailesh Jadavji Rabadia* (Civil Appeal E123 of 2023) [2023] stated as follows;

“The court, on its part, is itself bound by the pleadings of the parties. The duty of the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings. The court would be out of character were it to pronounce any claim or defence not made by the parties as that would be plunging into the realm of speculation and might aggrieve the parties or, at any rate, one of them. A decision given on a claim or defence not pleaded amounts to a determination made without hearing the parties and leads to denial of justice.”

31. Further, in denying the 1st Appellant an opportunity to be heard the Learned Magistrate failed to appreciate and consider that at the time of repossession the Orders issued by the High Court in Nairobi HCC Appeal No. E419 of 2024 (*Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers*) had lapsed on 10th June 2024 and the same had not been extended.

32. The Orders issued in by the High Court in Nairobi HCC Appeal No. E419 of 2024 (*Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers*) provided as follows:

“It is hereby ordered

That the interim orders of 26th March 2024 by Lady Justice Janet Mulwa be and are hereby extended to 10th June 2024.”

33. In *Vine Pack Limited v Milly Glass Works Limited* [2020] eKLR stated as follows;

“It is worth noting from the proceedings that on 24/10/2019 the orders issued on 16/8/2019 were not extended on 24/10/2019 when the highlighting of the application was to take place. Therefore, there were no orders subsisting capable of being maintained as regards the notice of motion application dated 29/7/2019. In any event, the Court never extended nor granted any orders in respect to the status quo or otherwise pending the hearing and determination of the appeal.

This being a Court of record, the record of the proceedings speaks for itself.

It is therefore clear that there is no Court order legally obligating the Respondent to obey, the Appellant/Applicant has not demonstrated that there was indeed a Court order, binding on the Respondent and whose terms were clear and capable of being obeyed. I agree with the learned Counsel for the Respondent that the orders expired/lapsed and therefore no contempt of Court can hold in the circumstances. There is nothing on record to support the Applicant’s contention that the orders were subsisting pending hearing and determination of the appeal.....none in the proceedings on record.” (Our Emphasis).

34. The stay orders issued by the High Court in Nairobi HCC Appeal No. E419 of 2024 (*Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers*) had lapsed and had not been extended at the material time. As such, there was no legal impediment to the execution of the repossession, and the Appellants acted well within their rights pursuant to the valid and subsisting orders of the Lower Court in Nairobi CMCC No. E451 of 2022 (*Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers*).



35. On 29th October 2025, the Respondent was granted leave to file and serve submissions. None were filed.

Analysis and determination;

Following are the issues for determination;

1. Whether the Appeal has merit.
2. Who shall bear the costs.

Whether the Appeal has merit.

36. In the case of *Selle & Another v. Associated Motor Boat Co Ltd & Others* [1968] EA the court held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.

37. This principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An Appeal to this court ... is by way of retrial and the principles upon which this court acts in such an Appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

38. Article 50 of *the Constitution* of Kenya provides that every person has a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or an independent and impartial tribunal or body.

39. The twin rules of natural Justice that no man shall be a Judge in his own cause (*Nemo Jude in causa ma*) and that no man shall be condemned unheard (*audi alteram partem*) are cardinal principles of law which are fundamental in our justice system.

40. On 12th July 2024, the trial court issued the following Orders:

- i. That the application is certified as urgent.
- ii. That pending hearing of this motion, an order of stay of execution issues of the orders herein dated the 14th June 2024 and all consequential orders issued to G. G Kamiri T/A Westminister Auctioneers (or any other Auctioneer) and in the meanwhile the Applicant’s (Crown Bus Services Limited) PSV Buses KCX 074G, KCX 075G and KCX 077G be not sold by private treaty or public auction, pledged for sale, or otherwise dealt with in any manner howsoever by the Respondents.
- iii. That the application be served and heard inter-partes on the 25th July 2024.

41. The Orders did not provide for express timelines in respect of filing of a Response.

42. The Learned Magistrate violated Article 159(2)(d) of *the Constitution* when it denied the 1st Appellant a reasonable opportunity to respond.

43. Section 3A of the *Civil Procedure Act* vests in the courts inherent power to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.



44. Granting only 3 days, to file its response was particularly unjust given that the 1st Appellant was served with the Respondent’s Application dated 11th July 2024, on 15th July 2024 and only retained Counsel on 18th July 2024.
45. The refusal to grant the request for a brief extension undermined the overriding objective in sections 1A & 1B and in 2010 by Article 159 of *the Constitution*.
- “Justice must not be sacrificed on the altar of strict adherence to provisions of procedural law which at times create hardship and unfairness.”
46. It is this court’s finding that the Trial Court in the result denied the 1st Appellant an opportunity to disclose material facts and shed more light to the issues arising from the said application.
47. In *M K v M W M & another* [2015] eKLR it was reiterated that;
- “The courts of this land have been consistent on the importance of observing the rules of natural justice and in particular hearing a person who is likely to be adversely affected by a decision before the decision is made. In *Onyango V. Attorney General* (1986-1989) EA 456, Nyarangi, JA asserted at page 459:
- “I would say that the principle of natural justice applies where ordinary people who would reasonably expect those making decisions which will affect others to act fairly.”
- At page 460 the learned Judge added:
- “A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at.”
48. The Learned Magistrate erred in law by allowing in its entirety the Respondent’s Application dated 11th July 2024 based on a curable procedural technicality in violation of Article 159(2)(d) of *the Constitution* of Kenya, 2010.
49. The fact that Order No. 2 of the Order dated 12th July 2024 expressly barred the sale—by private treaty or public auction—or any form of pledge of the PSV Buses registration number KCX 074G, KCX 075G and KCX 077G means that the Appellant suffered prejudice.
50. Owing to the impact that the impugned order had on the 1st Appellant, this court is of the view that in granting the Respondent’s Application, the magistrate prioritized strict compliance with procedural rules over substantive justice, infringing upon the 1st Appellant’s right to be heard.
51. Given that the court had not given any timelines for filing a response earlier, then the court is of the view that the trial magistrate should have been persuaded to accommodate the Appellant by giving it ample time.
52. On another front, this court is satisfied that the Learned Magistrate erred in law by illegally, irregularly and without jurisdiction reviewing and/or sitting on appeal of the orders of the court in Nairobi CMCC No. E451 of 2022 (*Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers*), which court allowed the repossession of the 1st Appellant’s assets.



53. The Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, contended that;
- “ A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law.”
54. It is this court’s finding and I so hold that the Ruling delivered by the Trial Court on 25th July 2024 was rendered without jurisdiction.
55. I say so because the magistrate acted illegally in sitting on a review or an appeal against the subsisting orders issued in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers).
56. The Learned Magistrate failed to duly appreciate that the 2nd Appellant’s Application dated 13th June 2024, specifically sought orders for police assistance in the repossession of the subject motor vehicles. In particular, the Application sought the following reliefs:
1. That this matter be heard in the first instance ex-parte.
 2. That this Honourable Court be pleased and do hereby issue orders directing the OCS Industrial Area Police Station to maintain law and order during the attachment and repossession of the proclaimed Motor Vehicles at the Respondent’s premises along Lusaka Road, Industrial Area by Westminster Commercial Auctioneers, being Registration Numbers KCX 074G, KCX 076G, KCX 077G, KCX 075G from Crown Bus Services Limited by Westminster Commercial Auctioneers for purpose of recovering 47, 831.39 USD due and owing to Scania Credit Solutions (PTY) Limited
 3. That this Honourable Court be pleased and do hereby issue orders directing the OCS of any Police Station immediate to any other private premises within the Republic of Kenya to maintain law and order during the attachment and repossession of the proclaimed motor vehicles by Westminster Commercial Auctioneers, being Registration Numbers KCX 074G, KCX 076G, KCX 077G, KCX 075G by Westminster Commercial Auctioneers from Crown Bus Services Limited to recover 47,831.39 USD due and owing to Scania Credit Solutions (PTY) Limited
 4. That the costs for this application be in the cause.
57. The Learned Magistrate exceeded the scope of his jurisdiction; in directing that the 1st Appellant return the repossessed motor vehicles to the Respondent.
58. The Trial Court was limited to determining the specific issue of whether police protection should be set aside.
59. It lacked jurisdiction to issue extraneous orders, particularly those directing the return of motor vehicles to the Respondent, as such matters were not the subject of the 2nd Appellant’s Application dated 13th June 2024.
60. The issue of repossession or return of the motor vehicles ought to have been addressed by the Court in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v. Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) and/ or the pending Appeal proceedings in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers).



61. It is noteworthy that Hon. Cherere J in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) held that the subject motor vehicles had been lawfully repossessed and were only returned subject to the impugned decision of 25th July 2024, delivered by the Learned Magistrate. The Appellate Court particularly held as follows;

“The Appellant has not proved such injury. On the contrary, the 1st Respondent has demonstrated that the vehicles in question were repossessed only after lawful orders were discharged, and that they were subsequently released to the Appellant following the ruling of 25th July 2024. Moreover, there is no evidence before the Court that the vehicles are at imminent risk of sale or permanent loss. Moreover, there is no evidence that the 1st Respondent, is incapable of compensating the Appellant should the appeal succeed.” (Our Emphasis)

62. In Michael Kasha Mwavula v Robert Waweru T/A Antique Auctioneers Agencies & Momentum Credit Limited (Civil Appeal E374 of 2023) [2024] KEHC 5988 stated as follows;

“In the case of Malawi Railways Ltd v Nyasulu [1998] MWSC 3, Malawi Supreme Court of Appeal stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled “The Present Importance of Pleadings” published in [1960] Current Legal Problems at p 174 whereof the learned author posited that:

As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadingsfor the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

63. The Learned Magistrate failed to appreciate and consider that at the time of repossession the Orders issued by the High Court in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminster Commercial Auctioneers) had lapsed on 10th June 2024 and the same had not been extended.



64. The Orders issued in by the High Court in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers) provided as follows:

“it is hereby ordered that the interim orders of 26th March 2024 by Lady Justice Janet Mulwa be and are hereby extended to 10th June 2024.”

65. The stay orders issued by the High Court in Nairobi HCC Appeal No. E419 of 2024 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers) had lapsed and had not been extended at the material time. As such, there was no legal impediment to the execution of the repossession, and the Appellants acted well within their rights pursuant to the valid and subsisting orders of the Lower Court in Nairobi CMCC No. E451 of 2022 (Crown Bus Services Limited v Scania Credit Solutions (Pty) Limited & GG Kamiri t/a Westminister Commercial Auctioneers).

Who shall bear the costs;

66. In Halsbury’s Laws of England, 4th Ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether cost are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

67. In Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

Determination:

68. The appeal has merit.

Order:

1. The Ruling of the Magistrate Court delivered on 25th July 2024, in Nairobi Chief Magistrates Court Civil Case No. MCCCmisc/E1064/2024 (Gg Kamiri T/A Westminister Commercial Auctioneers & Scania Credit Solutions (Proprietary) Limited v Crown Buses Limited) allowing the Respondent’s Application dated 11th July 2024, is hereby set aside.



2. The costs of this Appeal and the proceedings before the Magistrate's Court are awarded to the Appellants herein.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2026.

.....

J. M. CHIGITI (SC)

JUDGE

