

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL APPEAL NO. E076 OF 2025

ALI RIZWAN.....1ST
APPELLANT

ADVANCE AUTO IMPORT LIMITED.....2ND
APPELLANT

VERSUS

STEPHEN ONYANCHA GECHUKI.....1ST
RESPONDENT

TONY OMONDI ODERO.....2ND
RESPONDENT

RULING

1. This Court is tasked to determine a Notice of Motion dated 28th August 2025. It is brought under Order 42 Rule 6(2) of the Civil Procedure Rules, Articles 46(1)(c), 48 and 50(1) of the Constitution, and all other enabling provisions of the law.

The Appellants/Applicants seek the following principal orders;

a) Spent.

b) Spent.

c) THAT Hegeons Auctioneers be ordered to forthwith release the said motor vehicle to the 2nd Appellant motor vehicle Toyota Probox, chassis number NCP160-0098180, engine number 1NZ-8512222, which was removed from the 2nd Appellant's car showroom on 23rd August 2025 in execution of decree arising out of Kericho CMCC. No. E203 of 2022;

d) THAT there be a general stay of execution of the decree arising out of Kericho Chief Magistrate's Court Civil Case no. E203 of 2022 pending the hearing and determination of this appeal.

2. The Application is supported by the annexed affidavit of **RIZWAN ALI**, the 1st Appellant and a Director of the 2nd Appellant, sworn on 28th August 2025, and the grounds on the face of the Application.

3. The Applicants are aggrieved by the judgment of the Chief Magistrate's Court at Kericho in Civil Suit No. E203 of 2022 delivered on 12th June 2025, wherein judgment was entered against them jointly and severally for the sum of Kshs. 370,000/=, together with costs and interest.

4. Being dissatisfied, they have lodged an appeal to this Court, which they contend raises substantial and arguable points of law, including the question of whether judgment could regularly be entered against them in the absence of a formal defense and whether the lower court properly evaluated the evidence on record.

5. In execution of the said decree, Hegeons Auctioneers on 23rd August 2025 attached and removed from the 2nd Appellant's showroom a brand-new Toyota Probox motor vehicle, chassis number NCP160-0098180, engine number 1NZ-8512222. The vehicle is now scheduled for sale.

6. The Applicants contend that unless the orders sought are granted, they will suffer substantial loss. They argue that the sale of the vehicle will occasion grave hardship and irreparable financial loss, irreversibly disrupting their business operations. They emphasize that the value of the vehicle approximately Kshs. 1,060,000/= as per the auctioneer's valuation far exceeds the decretal sum, and that they would have minimal to no prospects of recovery or restitution even if their appeal ultimately succeeds.

7. They further state that they are willing and ready to provide such reasonable security as this Court may direct for the due performance of the decree.

8. They contend that the application has been filed without unreasonable delay and that no prejudice will be visited upon the Respondents that cannot be compensated by way of damages.

9. At the time of writing this ruling, the Respondents had not filed any response to the Application. The Application was served upon their advocates, Ken Ochieng & Co. Advocates, as evidenced by the affidavit of service on file. The Respondents chose not to participate in these proceedings.

10. The issues for determination are;

a) Whether the Applicants have made out a case for the grant of an order for the release of the attached motor vehicle; and

b) Whether the Applicants have made out a case for the grant of a general stay of execution pending appeal.

11. The principles governing the grant of stay of execution pending appeal are well settled. They are found in Order 42 Rule 6(2) of the Civil Procedure Rules, which provides;

"No order for stay of execution shall be made under sub-rule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made;

(b) the application has been made without unreasonable delay; and

(c) 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."

12. This Court is also guided by the overriding objective under Sections 1A and 1B of the Civil Procedure Act to facilitate the just, expeditious, proportionate and affordable resolution of disputes.

13. The first condition requires the applicant to demonstrate that substantial loss may result unless the stay is granted. In the case of ***James Wangalwa & Another v. Agnes Naliaka Cheseto [2012] eKLR***, the court observed;

"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. This is what substantial loss would entail."

14. The Applicants herein have deponed that the attached motor vehicle is a brand-new Toyota Probox valued at approximately Kshs. 1,060,000/=. This is significantly higher than the decretal sum of Kshs. 370,000/=.

15. More importantly, the Applicants are in the business of selling motor vehicles. The attachment and removal of a brand-new unit from their showroom not only deprives them of an asset that could be sold in the ordinary course of business but also disrupts their stock and cash flow. The Court takes judicial notice that for a motor vehicle dealership, stock-in-trade is the lifeblood of the business. The continued detention of the vehicle, pending the appeal, would amount to a continued execution, albeit indirectly.

16. The Applicants have also raised the specter of restitution. If the vehicle is sold and the appeal succeeds, they face the arduous task of tracing the purchaser and recovering the sum, a process that is neither guaranteed nor simple. This Court takes judicial notice that auction sales are often final and that recovering the proceeds from a judgment debtor can be challenging.

17. On the specific prayer for release of the motor vehicle, this Court notes that the vehicle is a distinct and identifiable asset. Its continued detention by the auctioneers, even if not immediately sold, still constitutes an ongoing deprivation of the 2nd Appellant's right to use and dispose of its property. The Applicants have demonstrated that the vehicle is not merely a commodity to be sold to satisfy the decree, but is their stock-in-trade.

18. I am satisfied that the Applicants have demonstrated a real risk of substantial loss, one that goes beyond the mere payment of money. The substantial loss lies in the potential destruction of their business, the irreparable harm to their stock, and the difficulty of restitution.

19. The judgment of the lower court was delivered on 12th June 2025. The decree was executed on 23rd August 2025. The instant application was filed on 28th August 2025, a mere five days after the attachment. There is no question of delay. The application has been filed with the utmost promptitude.

20. The Applicants have expressly stated, both in their grounds and in the supporting affidavit, that they are ready and willing to furnish such security as this Court may order for the due performance of the decree.

21. This demonstrates good faith on the part of the Applicants. The purpose of security is to ensure that the Respondent, should he ultimately succeed, is not left empty-handed. It is a balancing tool to protect the interests of both parties. The deposit of the decretal sum or provision of a bank guarantee would adequately protect the 1st Respondent's interests while preserving the Applicants' right of appeal.

22. In the view of this Court, Prayer 3 is a specific component of the broader stay of execution sought in Prayer 4. Execution is not a single event; it is a process. The continued detention of the Applicants' vehicle by the auctioneers is part and parcel of that

execution process. To grant a stay of execution without ordering the release of the vehicle would be to grant a half measure. The vehicle would remain in the custody of the auctioneers, accruing storage charges, and effectively holding the Applicants to ransom. That would not be a just or equitable outcome.

23. Consequently, if the Court is satisfied that a stay of execution ought to be granted, it follows logically that the attached property must be released to the judgment debtor, subject to appropriate conditions to secure the decree.

24. Having considered the application, the affidavit in support, the annexures, and the law, I am satisfied that the Applicants have met the criteria for the grant of orders of stay of execution pending appeal, including the specific order for release of the attached motor vehicle.

25. The Applicants have demonstrated substantial loss, filed their application without delay, and have expressed a willingness to provide security. It is in the interest of justice that the substratum of the appeal be preserved. To allow the continued detention and eventual sale of a high-value asset to satisfy a significantly lower decree, pending an appeal that raises arguable points, would be to render the appeal an academic exercise.

26. However, the grant of stay is discretionary and must be conditioned to protect the interests of the decree holder. The Applicants must provide adequate security for the due performance of the decree.

27. Accordingly, this Court makes the following orders:

a) Pending the hearing and determination of this appeal, there shall be a stay of execution of the judgment and decree in Kericho Chief Magistrate's Court Civil Suit No. E203 of 2022 on conditions that;

i) The Applicants shall, within 21 days from the date hereof, deposit the entire decretal sum of Kshs. 370,000/= in a joint interest-earning account in the names of the respective advocates for the Appellants and the Respondents.

ii). In default of compliance with condition (i) above, the orders of stay granted herein shall automatically lapse, and the Respondents shall be at liberty to proceed with execution.

b) By dint of the stay of execution granted in (a) above, Hegeons Auctioneers are hereby ordered to release forthwith to the 2nd Appellant, ADVANCE AUTO IMPORT LIMITED, the motor vehicle Toyota Probox, chassis number NCP160-0098180, engine number 1NZ-8512222, which was attached and removed from the 2nd Appellant's premises on 23rd August 2025.

c) The costs of this application shall be in the cause.

Dated, signed and delivered at Kericho this 10th day

of March, 2026.

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Mwesigwa for the Appellant