



Abson Motors Limited v Ameyo & another (Miscellaneous Civil Application E1163 of 2025) [2026] KEHC 2562 (KLR) (Civ) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1163 OF 2025
SN MUTUKU, J
FEBRUARY 12, 2026**

BETWEEN

ABSON MOTORS LIMITED APPLICANT

AND

ALICE LYDIA AMEYO 1ST RESPONDENT

BEYOND VISION AUCTIONEERS 2ND RESPONDENT

RULING

The Notice of Motion

1. For determination at this juncture is the Notice of Motion dated 3107/2025 (the Motion) brought by Abson Motors Limited (hereinafter the Applicant) and seeking the various prayers listed hereunder:
 - i. Spent.
 - ii. Spent.
 - iii. That the Honourable Court be pleased to order the immediate release of the Applicant's motor vehicle registration number KDK XXXX (Toyota Hilux) to the Applicant.
 - iv. In the alternative to the above, the Honourable Court do order a conditional release of the motor vehicle registration number KDK XXXX (Toyota Hilux) to the Applicant herein.
 - v. That this Honourable Court be pleased to exercise its supervisory jurisdiction and call for the record in Milimani Commercial Court Civil Case No. E256 of



2022 for purposes of examining the legality and regularity of the proceedings, decree, and execution process.

- vi. That the Honourable Court be pleased to reallocate the proceedings in Milimani Commercial Court Civil Case No. E256 of 2022 to a different court for hearing and determination.
 - vii. That the Honourable Court be pleased to grant any other or further orders as it may deem fit in the interests of justice.
 - viii. That costs of this application be provided for.
2. The Motion is brought pursuant to Section 3A of the *Civil Procedure Act* (CPA); Order 50 of the Civil Procedure Rules (CPR) and Articles 47, 50, 165(6) & (7) of *the Constitution* of Kenya, 2010. It is premised supported by the grounds presented on its face and in the supporting affidavit sworn by Fatma Abdulhakim, a Director with the Applicant.
 3. The averments in the supporting affidavit are that the Applicant was all along unaware of the existence of Milimani CMCC No. E256 of 2022 (the suit) having never been served with summons to enter appearance and that the Applicant only came to learn of the suit on 27/03/2025 when Beyond Vision Auctioneers (the 2nd Respondent), acting on instructions of Alice Lydia Ameyo (the 1st Respondent) visited the Applicant's premises in Nairobi with the aim of proclaiming its goods, in execution of the decree issued in the suit; that she immediately instructed her advocate to file an application on 28/03/2025 in the suit, seeking a stay of execution and setting aside of the judgment; that in the absence of an interim stay order, the 2nd Respondent proceeded to further proclaim the Applicant's goods at its Thika office on 11/04/2025, during which time the deponent discovered glaring inconsistencies on the face of the decree.
 4. The deponent has stated that, in particular, the decree was issued on 9/02/2024, which date preceded delivery of judgment on 30/08/2024, and that the judgment had been entered on the basis of an agreed settlement for a sum of Kshs.771,300/-, yet the matter had proceeded by way of formal proof hearing; that no application for execution had been filed by the 1st Respondent and no court fees is indicated as having been paid, before commencement of the execution process and therefore, that it is apparent that the warrants of attachment were irregularly issued.
 5. The deponent has further stated that attempts at obtaining an order for stay of execution in lower court were unsuccessful and that subsequently on 24/04/2025 the 2nd Respondent irregularly attached the Applicant's motor vehicle registration number KDK XXXX (Toyota Hilux) (the subject motor vehicle) and transported it to Capitol Diamond Storage and Auction Yard situated in Thika.
 6. That the lower court issued an order for stay on 29/04/2025 but that order was rendered ineffective in view of the attachment of the subject motor vehicle; that the subject motor vehicle continues to be detained, thereby causing the Applicant to suffer grave loss of business; that the attachment of the subject motor vehicle which is valued at Kshs. 3,000,000/- is grossly disproportionate to the decretal sum which stands at Kshs. 771,300/-; that the Applicant is willing to deposit a bank guarantee for the decretal sum as a condition for release of the subject motor vehicle pending hearing and determination of the instant Motion, further conveying her apprehension that unless the prayers sought are granted, the subject motor vehicle is likely to be disposed of.
 7. The deponent has stated that the Applicant has lost confidence in the trial court and seeks to have this matter re-allocated to a different court, upon this court exercising its supervisory jurisdiction over the trial court.



Replying Affidavit

8. The 1st Respondent has opposed the Motion through a Replying Affidavit sworn on 7/10/2025. She has deposed that she filed the suit against the Applicant, who was ultimately held vicariously liable; that following judgment in the suit, she extracted the decree whose execution was undertaken by the 2nd Respondent by way of proclamation; that the Applicant filed an application dated 28/03/2025, seeking to set aside the judgment and decree issued therein, which application is still pending before the trial court and that in the circumstances, the instant Motion is incompetent and fatally defective under the doctrine of sub-judice, in view of the pending application which raises issues substantially similar to the issues in the instant application. The 1st Respondent has further termed the instant Motion an afterthought and an abuse of the court process, aimed at delaying the execution process.
9. For the reasons given, the 1st Respondent holds the view that the Motion lacks merit and therefore ought to be dismissed with costs, with an alternative request that the security paid by the Applicant be released as part settlement of the lower court judgment.

Submissions

10. Pursuant to the directions of this court, the Motion was canvassed through oral submissions. Submitting in support of the Motion, Ms. Kimiti, learned counsel for the Applicant, argued that the prayers sought at this stage are prayer (v) and (vi), the other prayers being spent; that the Applicant is asking this court to exercise its supervisory jurisdiction over the subordinate court especially in respect of the decree issued therein, which decree, counsel deems to be fatally defective for having been given on 9/02/2024 and issued on 21/03/2025 whereas the judgment was delivered on 30/08/2024 and that this issue and the related pertinent issues relating to the decree and the execution have not been addressed by the 1st Respondent in her replying affidavit.
11. It was argued that according to the decision rendered in *Law Society of Kenya v Centre for Human Rights and Democracy & 13 others* [2013] KECA 172 (KLR), the Court of Appeal pronounced that the supervisory jurisdiction of the High Court is laid out under Article 165(6) of *the Constitution* and does not equal appellate jurisdiction, thereby countering the 1st Respondent's averment that the instant Motion is sub-judice. Counsel also relied on the decision in *Kennedy Mwaura Kibebe & 3 others v Annie Wanjiku Kibeh & 3 others* [2021] KEHC 5236 (KLR) where the principle of supervisory jurisdiction was equally addressed.
12. Ms. Mwenje, advocate for the 1st Respondent, reiterated her client's earlier averments, that the instant Motion offends Section 6 of the CPA which provides for the doctrine of sub-judice since the prayers sought therein are similarly sought before the trial court. Counsel cited the case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] KESC 54 (KLR) where the Supreme Court addressed the question whether the issues arising in the Reference were sub-judice.
13. It was submitted that while the Applicant has purported to raise the issue of supervisory jurisdiction of the High Court, the same remains unsupported by way of any evidence; that the suit was properly before the trial court and if the Applicant was dissatisfied with the outcome thereof, it was at liberty to seek appropriate recourse and that the Motion is an attempt by the Applicant at forum shopping.
14. In her brief rejoinder, Ms. Kimiti contended that the Supreme Court in the case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* was addressing the subject of Section 6 of the CPA which is different from the principle of supervisory jurisdiction.



Analysis and Determination

15. I have considered the Motion, the grounds in support and the Replying Affidavit in opposition as well as the rival oral arguments. I have noted that the Motion initially sought a total of six (6) substantive prayers. When the matter came up in court on 2/08/2025, the court (Mulwa, J.) granted prayer (iv) as well as a stay of execution on the condition that the Applicant deposits a sum of Kshs. 450,000/- in court as security within seven (7) days thereof, failing which the temporary stay order would automatically lapse.
16. The record shows that when the parties attended court on 15/1/2025, counsel for the Applicant told the court that they had complied with the above conditions by depositing the sum and that the subject motor vehicle had been released to the Applicant. This position was confirmed by counsel for the 1st Respondent. In the circumstances, this court issued directions on the manner of hearing the instant Motion. This makes prayers (iii) and (iv) of the Motion both pertaining to the release of the subject motor vehicle, are now spent.
17. As relates to prayers (v) and (vi), this court is urged to exercise its supervisory jurisdiction by calling for the lower court record relating to the suit in order to examine the legality and regularity of the proceedings and resulting decree as well as the execution process, or reallocation of the proceedings relating to the suit for hearing and determination before a different magistrate.
18. The supervisory jurisdiction of the High Court is provided for under Article 165(6) & (7) of *the Constitution*, which express thus:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6) the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
19. Having considered this matter and in the exercise of my supervisory jurisdiction bestowed under Article 165(6) & (7) of *the Constitution*, the lower court file was called for and placed before this court on 21/01/2026. I have taken the liberty of examining the record of the trial court and I have observed that at the onset, the 1st Respondent instituted the suit against the Applicant and another person not before this court, vide a plaint dated 24/01/2022 seeking general and special damages for injuries sustained in a road traffic accident which occurred on 2/11/2021. The lower court record shows that an interlocutory judgment was entered against both the defendants on 14/12/2023 for failing to enter appearance within the statutory timelines, upon which the matter proceeded for formal proof. Final judgment was delivered by Hon. Langat Betty Koech (Senior Principal Magistrate) on 30/08/2024, in favour of the 1st Respondent in the sum of Kshs. 771,300/-.
20. I have observed that the 1st Respondent commenced the execution process, thereby triggering an application dated 28/03/2025 whereby the Applicant sought to set aside the judgment delivered in the suit and the resulting decree, as well as all consequential orders, to enable it defend the suit. There is also another application dated 14/04/2025 filed by the Applicant, seeking to declare the decree issued in the suit and dated 9/02/2025 to be improper and in conflict with the judgment on record.



21. The record shows that both applications were placed before Hon. Ole Keiwua (Chief Magistrate), who, vide a ruling delivered on 10/12/2025, found that service of summons was not properly undertaken and therefore proceeded to set aside the interlocutory judgment entered on 14/12/2023 and all consequential orders.
22. From the foregoing, it is clear that the setting aside order has automatically negated the decree and execution process and that the prayers sought by the Applicant and relating to the decree and execution process have been overtaken by the events set out above. Therefore, the issue whether the instant Motion is sub judice has also been overtaken by events, for the same reasons.
23. The position, as it stands, in my view is that the only live prayer left for consideration is prayer (vi) which I see no reason to decline to grant in the circumstances.
24. Consequently, the Notice of Motion dated 31/07/2025 succeeds in terms of prayer (vi). The following orders are issued:
 - a. An order be and is hereby issued directing that the file relating to Milimani Commercial Court Civil Case No. E256 of 2022 be re-allocated to any competent Magistrate other than Hon. Langat Betty Koech (Senior Principal Magistrate) for hearing and disposal.
 - b. Each party shall each bear their own costs of the instant Motion.
25. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF FEBRUARY 2026.

S. N. MUTUKU

JUDGE

