



**Gazlin Energy Limited v Africa Merchants Assurance Company
Limited & 5 others (Miscellaneous Civil Application E849 of 2025)
[2026] KEHC 2396 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E849 OF 2025
PM MULWA, J
FEBRUARY 26, 2026**

BETWEEN

GAZLIN ENERGY LIMITED APPLICANT

AND

**AFRICA MERCHANTS ASSURANCE COMPANY LIMITED 1ST
RESPONDENT**

**ABDIRAHMAN HAJI ABDI (SUING AS ADMINISTRATOR, ESTATE OF
ABIDIKADIR ABDIRAHAM HAJI - DECEASED) 2ND RESPONDENT**

JOSEPH MUNENE MAINA 3RD RESPONDENT

EDWARD GITAU NDUATI 4TH RESPONDENT

**ANTHONY GATHENYA T/A CHEWANS MOTOS LIMITED 5TH
RESPONDENT**

PHILLIP INTERNATIONAL AUCTIONEERS 6TH RESPONDENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 19th August 2025, brought pursuant to Article 50(1), 159(2) 165(6) & (7) of *the Constitution*, section 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules. The applicant inter alia seeks the following orders:
 - i. An order staying the proceeding and/or any further execution in the subordinate court in Milimani MCOMMSU No. E474 of 2024 - Gazlin Energy Limited v Africa Merchants Assurance Company Ltd and Abdirahaman Haji and another, MCOMMSU/E1045/2025



- Joseph Munene Maina and Edward Gitau Nduati v Gazling Energy Limited and Anthony Gathenya T/A Chewan Motors Ltd and 1 Other and MCCCmisc/E1631/2025 - Phillips International Auctioneers and Chewan Motors v Registrar of Motor Vehicles pending the hearing and determination of this Application.

- ii. An injunction directing that motor vehicles KCB 241X and ZE 7361 remain detained at Parklands police station.
 - iii. Invocation of this Court's supervisory jurisdiction to call for and examine the records of the subordinate courts in Milimani MCOMMSU No. E474 of 2024 - Gazlin Energy Limited v Africa Merchants Assurance Company Ltd and Abdirahaman Haji and others, MCOMMSU/E1045/2025 Joseph Munene Maina and Edward Gitau Nduati v Gazlin Energy Limited And Anthony Gathenya T/A Chewan Motors Ltd And 1 Others and MCCCmisc/E1631/2025 - Phillips International Auctioneers And Chewan Motors v Registrar of Motor Vehicles for purposes of satisfying itself as to the regularity, legality, and propriety of the warrants and subsequent proceedings.
 - iv. Costs be provided for.
2. The application is supported by the affidavit of Mohamed Ahmed Mahmud. It is opposed by all the Respondents through replying affidavits. The application was canvassed by way of written submissions.
 3. The Applicant contends that judgment was entered against it in Nairobi CMCC No. 5063 of 2018 and that it thereafter filed a declaratory suit, Milimani MCOMMSU No. E474 of 2024, against its insurer. It asserts that a stay of execution was granted on 9th August 2024 and that notwithstanding the subsisting orders, execution proceeded, culminating in the sale of the subject motor vehicles through public auction. It is the Applicant's case that the sale was conducted in contempt of court orders and that the purchasers have since sought vesting orders irregularly.
 4. The 2nd Respondent, Abdirahaman Haji Abdi, opposes the application. He deposes that the decree in CMCC No. 5063 of 2018 was lawfully obtained and that the Applicant has, for over five years, engaged in repeated applications and appeals designed to frustrate realization of the decretal sum. He states that the stay granted on 9th August 2024 was conditional upon prosecution of the declaratory suit within six months, a condition with which the Applicant failed to comply. He asserts that upon lapse of the six-month period, the stay automatically lapsed and execution lawfully resumed. According to him, warrants were duly issued, proclamation undertaken, and the motor vehicles lawfully attached and sold. He contends that the present application is an afterthought filed after completion of lawful execution and constitutes an abuse of court process.
 5. The 3rd and 4th Respondents, through the affidavit of Joseph Munene Maina, adopt a similar position. They set out the chronology of prior applications for stay and leave to appeal, which were dismissed in 2022, 2024 and February 2025. They maintain that as at 10th March 2025, there was no valid stay order in force and that execution resumed lawfully. They state that the motor vehicles were proclaimed, advertised and sold in compliance with the law. They deny any knowledge of subsisting restraining orders at the time of the auction and assert that the Applicant's subsequent police report alleging theft was a calculated attempt to defeat lawful execution. It is their position that any loss suffered by the Applicant lies, if at all, against its insurer in the declaratory suit and not against bona fide purchasers.
 6. The 5th Respondent, Anthony Gathenya, avers that he lawfully purchased the motor vehicles at a public auction conducted on 11th April 2025 after the same had been duly advertised in a newspaper of national circulation. He deposes that he emerged the highest bidder, paid the purchase price and



subsequently sought to effect transfer through the Registrar of Motor Vehicles, whereupon he was directed to obtain a vesting order. He contends that ownership passed to him upon the fall of the hammer and that he is a bona fide purchaser for value. He further states that he purchased the motor vehicles as tools of trade and has been denied peaceful possession due to the Applicant's actions. In his view, the present application is misconceived and intended solely to delay his enjoyment of proprietary rights.

7. The 6th Respondent, a licensed auctioneer, confirms that he received lawful instructions from the decree-holder's advocates following issuance of valid warrants of attachment. He deposes that the proclamation was duly served; that the motor vehicles were attached, stored and advertised for sale; and that the auction was conducted on 11th April 2025 in compliance with the *Auctioneers Act* and Rules. He states that no subsisting stay order restraining the sale was served upon him at the time of the auction and that he would not have proceeded had valid orders been in force. He contends that the Applicant is now seeking to invalidate a lawful execution process after failing to secure extension or renewal of stay.
8. The Application was heard by way of written submissions.

Analysis and determination

9. I have carefully considered the application, the affidavits on record and the written submissions filed by the parties. The following issues falls for determination;
 - i. Whether there exists a legal basis to grant stay of execution and proceedings.
 - ii. Whether this Court should exercise its supervisory jurisdiction under Article 165(6) and (7) of *the Constitution*.
 - iii. Whether the Applicant is entitled to injunctive relief.

On stay of execution

10. Although the application is not expressly brought under Order 42 Rule 6 of the Civil Procedure Rules, the principles governing stay of execution are settled. An applicant must demonstrate substantial loss, that the application was filed without unreasonable delay, and furnish security.
11. In *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Court of Appeal held:

“The power of the court to grant or refuse an application for stay of execution is discretionary. The discretion should be exercised in such a way as not to prevent an appeal.”
12. Further, in *Kenya Shell Ltd v Kibiru & Another* [1986] KLR 410, the Court stated:

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”
13. In the present case, the evidence on record demonstrates that the conditional stay granted on 9th August 2024 was expressly limited to six months. It is uncontested that the declaratory suit was not prosecuted within that period. No extension was sought. A conditional stay lapses automatically upon non-compliance. Once lapsed, execution lawfully resumes.
14. The Applicant has not demonstrated that, as at 10th March 2025, when warrants were issued, there existed a subsisting stay order. The sale occurred on 11th April 2025. The Applicant now seeks to undo a completed sale.



15. The law is settled that courts do not act in vain. In *Madhupaper International Ltd v Kerr* [1985] KLR 840, the Court emphasized that a court order is binding unless set aside. Conversely, where an order lapses by its own terms, no violation arises.
16. Further, once property is sold at a public auction to a bona fide purchaser for value without notice, the sale is not lightly impeached. In *Mbuthia v Jimba Credit Finance Corporation & Another* [1988] KLR 1, the Court of Appeal held that a purchaser at a public auction is protected unless fraud or illegality is proved.
17. The Applicant has not demonstrated fraud, collusion, or illegality in the conduct of the auction. The material before the Court shows warrants were issued, proclamation undertaken, advertisement made, and sale conducted.
18. The application for stay is therefore overtaken by events. The execution process culminated in a completed auction sale.

On supervisory jurisdiction

19. Article 165(6) and (7) of *the Constitution* confers supervisory jurisdiction upon this Court over subordinate courts. However, that jurisdiction is not appellate in nature. In *Republic v Chief Magistrate's Court at Mombasa Ex parte Ganijee & Another* [2002] 2 KLR 703, the Court held that supervisory jurisdiction is concerned with jurisdictional errors and procedural impropriety, not with reconsideration of merits. The Applicant has not demonstrated that the subordinate courts acted without jurisdiction or in contravention of the law.
20. The record shows that the stay granted on 9th August 2024 was conditional. The Applicant does not dispute that it failed to prosecute the declaratory suit within six months. Upon lapse of the conditional period, the stay ceased to operate. Execution thereafter resumed.
21. The Court of Appeal in *Kenya Shell Ltd v Benjamin Karuga Kibiru* [1986] KLR 410 emphasized that a successful litigant is entitled to the fruits of his judgment. Courts must guard against undue interference with lawful execution.
22. The sale of the motor vehicles having been conducted pursuant to valid warrants, and no subsisting stay having been demonstrated as at the date of sale, the rights of the purchaser crystallized upon the fall of the hammer. In *Mbuthia v Jimba* (supra), the Court affirmed that a bona fide purchaser at a public auction acquires good title unless fraud or illegality is established. No such fraud has been demonstrated before this Court.
23. The Applicant has not demonstrated that the subordinate court acted without jurisdiction or in excess of jurisdiction. The warrants were issued in execution of a valid decree. The conditional stay had lapsed. No evidence has been presented of procedural impropriety warranting constitutional intervention.
24. Supervisory jurisdiction cannot be invoked to re-open concluded execution proceedings or to circumvent ordinary appellate procedures.

On injunctive relief

25. The principles for grant of interlocutory injunction are settled in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise



suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

26. These three principles remain the foundational test for the grant of temporary injunctions in Kenya and have been consistently applied and reaffirmed in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the court emphasized that the three conditions for the grant of an interlocutory injunction are sequential and distinct.
27. A prima facie case is defined in *Mrao Ltd v First American Bank of Kenya Ltd* [2003] KLR 125 as:

“A case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed...”
28. The Applicant has not demonstrated a subsisting proprietary right in the subject motor vehicles following a completed public auction and vesting orders. Any loss arising from execution lies, if at all, in damages or against the insurer in the declaratory suit.
29. The vehicles were sold in April 2025. The prayer to preserve them is belated and cannot undo a lawful sale.
30. The record discloses multiplicity of applications across various courts relating to the same subject matter. In *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] KLR 229, the Court of Appeal described abuse of process as:

“The use of the court process for a purpose or in a way significantly different from its ordinary and proper use.”
31. The present application seeks to re-litigate execution issues already determined and overtaken by events. It is a trite law that litigation must come to an end.
32. Having carefully considered the application, affidavits, submissions, and applicable law, I find the Applicant has not established a prima facie case for injunctive relief.
33. Accordingly, the Notice of Motion dated 19th August 2025 is hereby dismissed. The Respondents shall have the costs of the application.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2026.

P.M MULWA

JUDGE

In the presence of:

Mr. Lutukai h/b for Mr. Madowo for Applicant

Mr. Nanda for 2nd Respondent

Mr. Njogu for 3rd and 4th Respondents

Ms. Atieno h/b for Mr. Okemwa for 5th Respondent

Ms. Somba for 6th Respondent



Court Assistant: Carlos

