



**Lwambi v Jumba (Civil Appeal E015 of 2025)
[2026] KEHC 2419 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E015 OF 2025
M THANDE, J
FEBRUARY 27, 2026**

BETWEEN

KAITA BAYA LWAMBI APPELLANT

AND

MONICA OMONDI JUMBA RESPONDENT

RULING

1. By an Application dated 17.2.25, the Appellant seeks stay of execution, pending appeal, of the ruling of 4.2.25 in Kilifi CMCC No. E163 of 2017.
2. The Appellant is aggrieved by the ruling of the trial court delivered on 4.2.25 and has already filed an appeal against the said decision. The Appellant's case is that judgment was entered in his favour on 24.6.19 in the suit which he filed against the Respondent. He was awarded Kshs. 1,261,470/= for injuries sustained in an accident involving the Respondent's motor vehicle KBN 549V in which he was a passenger. In execution of the decree, the Appellant's advocates instructed auctioneers who attached the Respondent's vehicle KCZ 634K (the vehicle). The Respondent's application to set aside the judgment was dismissed on 4.9.23. Thereafter the Respondent sought to negotiate settlement but failed to execute the consent as proposed and agreed. The Respondent filed another application for stay of execution of judgment which was allowed in the ruling of 4.2.25. The Appellant contended that his appeal raises serious arguable grounds including that the court was functus officio and could not grant the order for stay, and has high chances of success; that unless stay is granted, he will suffer irreparable loss and the appeal will be rendered nugatory as the Respondent is likely to place the vehicle beyond his reach. Further that the Application has been made without unreasonable delay.
3. The Respondent opposed the application through a replying affidavit sworn on 6.3.25 by her counsel, Geoffrey Kilonzo. He averred that the Application is brought in bad faith and is meant to deny the Respondent the fruit of litigation, is bad in law, incompetent and is an abuse of the court process. He added that the Application is overtaken by events as the vehicle was released to the Respondent and that



any orders issued would be in vain. Further, that the Respondent established that the execution and attachment of the vehicle was not proper as she was not served with the warrants of attachment and sale, proclamation notice and notification of sale prior to attachment of the vehicle. It was further averred that the Appellant and the Respondent's insurance company had reached a settlement on payment of the decretal amount which the Appellant has admitted. Additionally, that the application in the trial court giving rise to the appeal was unchallenged and uncontroverted. The Respondent urged that the Application be struck out with costs.

4. The Respondent contends that the Application is overtaken by events and a non-starter because the vehicle was released to the Respondent on 11.2.25 by the auctioneers and that any orders would be issued in vain. The Appellant did not address this issue in his submissions.
5. In the impugned ruling, the trial court made the following orders:
 - i. A stay be and is hereby issued of sale of vehicle No. KCZ 634K.
 - ii. An order be and is hereby issued for return of vehicle No. KCZ 634K to the defendant on the following conditions.
 - a. The defendant surrenders within 14 days of the ruling herein the original logbook for vehicle No. KCZ 634K to the plaintiff or his advocates who are at liberty to lodge a caveat with NTSC (sic) restricting any transfer of the vehicle.

The payment of the Auctioneers fees and storage charges if any is held in abeyance pending the lifting of the Moratorium or other/further directions in regard to the Moratorium.
6. Pursuant to the impugned ruling, the vehicle was released to the Respondent. The fact of release of the vehicle is demonstrated by the exhibited letter from Ndutumi Auctioneers dated 11.2.25 directing Matriz Moves Kenya Limited to release vehicle to the Respondent. This was not disputed by the Appellant.
7. In view of the release of the motor vehicle to the Respondent, the Application has clearly been overtaken by events. There is therefore nothing to stay and any orders of stay would be issued in vain. In this regard, I associate with the holding in *Kaminja & 3 others (Suing as Westland Environmental Caretaker Group) & 3 others v County Government of Nairobi [2019] KEHC 2059 (KLR)* where Mativo, J. (as he then was) stated:
 32. Applying the above time tested and refined principles of law to the instant case, it is obvious that there remains no unresolved justiciable controversy in the present Judicial Review Application. Courts generally only have subject-matter jurisdiction over live controversies. When a case becomes moot during its pendency, the appropriate first step is a dismissal of the case. [24] On this ground alone, this case falls for dismissal. I find no need to address the case on merits.
8. In the end and in light of the foregoing, the Court finds that the Application dated 17.2.25 lacks merit and the same is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 27TH DAY OF FEBRUARY 2026

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M. THANDE

JUDGE

