



**Kathurima v My Credit Limited (Civil Appeal E123 of 2025)
[2026] KEHC 3436 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E123 OF 2025
HM NYAGA, J
MARCH 12, 2026**

BETWEEN

MARTIN KATHURIMA APPELLANT

AND

MY CREDIT LIMITED RESPONDENT

RULING

1. By an application dated 31/7/2025, the appellant/applicant has sought the following orders:
 - i. Spent
 - ii. That the Honourable court do issue an order that either the respondent through their agents, servants and /or anyone acting on their behest to unconditionally return the motor vehicle registration number KBZ 920Z to the possession of the application and/or until further orders.
 - iii. That in the alternative, the honourable court do issue an order for caveat against the subject motor vehicle registration number KBZ 920Z that no transfer should be done pending hearing and determination of the application and/or until further orders.
 - iv. That the orders obtained vide Milimani Commercial Court Misc. Application No. 1612 of 2025 were illegally obtained as the application was not served upon the appellant/applicant.
2. The application is premised on the grounds set out on the face of it and is supported by the applicant's affidavit sworn on an even date.
3. In a nutshell, the applicant's case is that he had filed suit in the lower court, which was dismissed and judgment was entered against him on the counter-claim. That the judgment in that suit was delivered on 20/5/2025 and he immediately obtained a stay of execution for 30 days. That before the 30 days



- expired, he moved the trial court vide an application dated 30/6/2025 but was only acted upon on 3/7/2025 and it granted a stay pending the hearing of the application inter-partes.
4. The applicant further avers that while the above was going on, on 30/6/2025, the respondent through an auctioneer illegally and in concealment of material facts moved Milimani Commercial Court Nairobi vide Misc. Application No. E1612 of 2025 and obtained orders to repossess the motor vehicle. The applicant terms the orders issued in that application as amounting to impunity and a miscarriage of justice. He thus seeks the unconditional release of the vehicle to him and a caveat to issue against any transfer thereof.
 5. In response the respondent filed a replying affidavit sworn by one Jackline Kiambi, its head of credit. She deponed that the repossession of the vehicle took place after the court dismissed the application for stay for non-attendance by the applicant. That if the applicant was aggrieved by any disobedience of the stay orders which had been granted, he ought to have approached the trial court that had issued the orders and not this court.
 6. It is further averred that the applicant was given a chance to redeem the motor vehicle and failed to do so and the vehicle was sold on 1/9/2025 through a public auction for Kshs.1,200,000/=. That the requisite documents were issued to the purchaser and as such the orders sought have been overtaken by events.
 7. It is further deponed that a grant of the orders sought would be highly prejudicial to the respondent, who obtained a lawful judgment after due process and repossessed the motor vehicle lawfully.
 8. In his supplementary affidavit sworn on 2/12/2025, the applicant avers that his application dated 30/8/2025 was never dismissed as alleged and that by 3/7/2025, the respondent had already illegally repossessed the motor vehicle. That the repossession was illegal as the motor vehicle had not been registered as security for the loan.
 9. Parties filed submissions which I have considered and will where necessary refer to them.
 10. As I had noted in my directions issued on 27/10/2025, although the application was dated 31/7/2025, it was only actioned to this court on the CTS on 24/10/2025. By then, from the material placed before me, it is apparent that the motor vehicle had been sold through a public auction.
 11. It is not in dispute that the respondent financed the applicant in the sum of Kshs.780,000/= for the purchase of the motor vehicle in question. A sum of Kshs.689,465/= was paid to one David Irungu the owner of the said vehicle, through his loan account at K-Unity Sacco. The motor vehicle was to be used as security for the loan.
 12. The applicant states that the motor vehicle was never registered as security as had been intended and as such the respondent could not repossess the same.
 13. The trial court's judgment was duly filed herein. In it, the court noted that while the respondent was in the process of transferring the vehicle from the name of David Irungu to the joint names of itself and the applicant, the latter defaulted on the loan repayment. The court also noted that the applicant moved it seeking on injunction to prevent the respondent from re-possessing the vehicle, yet he had clearly defaulted on the repayments.
 14. The applicant's argument is that the respondent obtained orders in Milimani Court while there existed orders of the trial court restraining the repossession. The respondent argues that the stay orders were vacated when the application was dismissed for non-attendance. The respondent terms the present application as an abuse of the court process since at the time it was filed, the applicant had engaged



the lower court with an application for stay. It was submitted that the application before the court was sub judice.

15. Having looked at the nature of the orders sought before the court and the revelation that the motor vehicle was already sold, I am of the view that any orders issued will have been overtaken by events, a scenario I noted when I gave direction on the application.
16. The question whether the alleged repossession was lawful or not, is the subject of the appeal and if successful, the applicant would be entitled to compensation. That said, cannot seek to stop the respondent from recovering the loan amount which he has defaulted on, and for which judgment has been entered.
17. In his suit, the applicant had already quantified his loss of business at Ksh.160,000/= a month with effect from 20/5/2022. Therefore, damages are adequate compensation, should his appeal be successful.
18. For the foregoing reasons, I decline to grant the orders sought. The application is dismissed as it had been overtaken by events.
19. There shall be no orders as to costs on the application.

DATED, SIGNED & DELIVERED AT MERU THIS 12TH DAY OF MARCH, 2026.

H.M. NYAGA

JUDGE

