REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCCOMM NO. E1317 OF 2025

FAIRBANKS LIMITED……………………………………1ST APPLICANT/PLAINTIFF

ZEYANA ENTERPRISES LIMITED……………………..2ND APPLICANT/PLAINTIFF

VERSUS

ALLIANCE LEASING LIMITED……………………1ST RESPONDENT/DEFENDANT

TIMELESS DOLPHIN AUCTIONEERS………….2ND RESPONDENT/DEFENDANT

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RULING

Introduction

1. Before Court is the Applicants' Notice of Motion dated 19th December 2025, in which the Applicants seek a range of reliefs arising from the repossession of four motor vehicles that are the subject of the underlying asset finance agreements between the parties.

2. The Motion seeks, inter alia: orders citing the Respondents for contempt of court, a stay of execution, injunctive relief to restrain the sale or disposal of the suit vehicles, and mandatory orders compelling release of the vehicles to the Applicants.

3. The application is supported by the affidavit of **Hawa Eddle Ibrahim**, a director of both Applicant companies, sworn on the

same date, together with a Supplementary Affidavit sworn on 24th February 2026.

4. The factual background giving rise to the application is that the parties entered into separate asset finance arrangements under which the Respondents financed the acquisition of four commercial motor vehicles used by the Applicants in the course of their waste-collection business.

5. Following the institution of suit before the Milimani Chief Magistrates' Court on 21st March 2024 (CMCC No. E1074/2024), the Applicants obtained interim relief on 22nd March 2024, staying the **sale** of the vehicles pending inter partes hearing.

6. Subsequent directions were issued on 13th May 2024, directing the Respondents to release the motor vehicles to the Applicants forthwith and to furnish them with true and updated loan statements and amortization schedules within 30 days. The matter was later transferred to this Court on 23rd October 2025 pursuant to an order made in Nairobi HCCOMM Misc. E609 of 2025.

7. The Applicants aver that notwithstanding the earlier orders, the Respondents proceeded on 24th June 2025 to repossess the vehicles without notice, without lawful justification, and in a manner calculated to defeat the court's authority and the subject matter of the pending proceedings.

8. They assert that the repossession was unlawful and constituted willful disobedience of extant court orders and that the Respondents have failed, neglected, or refused to furnish accurate and complete statements of account. They further contend that they have substantially repaid the loan amounts

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and, in the case of the 2nd Applicant, have allegedly overpaid the facility by over Kshs. 8 million, thereby negating any lawful basis for repossession.

9. The Respondents opposed the application through the replying affidavit of **Rajiv Bhushan,** sworn on 17th February 2026, arguing that the Applicants have not satisfied the threshold for contempt or for equitable injunctive relief.

10. The Respondents further contended that the Motion is an omnibus application lacking procedural propriety; that there were no subsisting injunctive orders capable of being breached; that the repossession was undertaken pursuant to express contractual rights arising under **Clause 14.1** of the Asset Finance Agreements; and that the Applicants remain indebted in amounts exceeding **Kshs. 16 million** jointly.

11. The application proceeded by way of written submissions. The Applicants, through the **P.N. Khisa Advocates,** filed submissions dated 25th February 2026, whilst the Respondents' Advocates, **Hamilton Harrison & Mathews Advocates,** filed their submissions dated 2nd March 2026.

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Analysis and Determination

12. The Court has carefully considered the Motion, the affidavits and documentary evidence filed by both parties, as well as the detailed submissions and authorities cited. Arising for determination are the following principal questions: -

i. whether the Motion is fatally defective as an omnibus application;
ii. Whether the Respondents are liable for contempt of court;
iii. Whether the orders sought as “stay of execution” are competent; and
iv. Whether the Applicants have met the legal threshold for the grant or denial of interlocutory injunctive relief and/or mandatory orders.

Whether the Motion is fatally defective for being omnibus

13. The Respondents urged that the Motion bundles distinct prayers governed by different legal tests and procedures and is thus incurably defective. They cite the case of **Ashana Raikundalia & 2 others v Arun C. Sharma [2017] KECA 574 (KLR)**, where the Court of Appeal stated that omnibus applications are incapable of proper adjudication, and as they conflate different jurisdictions governed by separate rules and principles.

14. No submissions were made by the Applicant in response to the Respondent’s contention.

15. While the Court disapproves of the untidy practice that conflates different jurisdictions or legal tests into a single motion, such a defect is not, without more, fatal to an application. The guiding consideration is whether the form of the motion obscures the issues for determination or occasions prejudice to the opposing party.

16. In the present case, the reliefs sought arise from a common factual substratum, and the Court is able to isolate and

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subject each prayer to the applicable legal threshold without procedural confusion. The Respondent has also fully responded to the application, and no demonstrable prejudice has been shown to arise from the manner in which the motion is framed.

17. While the Court disapproves of the untidy practice that conflates different jurisdictions or tests into a single motion, the Court is of the view that the reliefs sought here arise from a common factual substratum and can be segregated and determined on their proper legal footing without any prejudice to the Respondent.

18. Guided by **Article 159(2)(d) of the Constitution**, which enjoins courts to administer justice without undue regard to procedural technicalities, the Court declines to strike out the application on account of its structure

19. The objection is therefore overruled, and the Court will now proceed to consider each prayer on its merits.

Whether the Respondents are in Contempt of Court

20. The Applicants sought to have the Respondents cited for contempt of court, allegedly arising from the disobedience of orders issued by the Magistrates' Court on 22nd March 2024 and 13th May 2024.

21. The legal basis for contempt jurisdiction in Kenya presently derives from **section 5(1) of the Judicature Act**, which provides that:

> "The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the

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time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts."

22. By virtue of section 5(1) of the Judicature Act, the procedure for contempt follows the High Court of Justice in England, now codified in Part 81 of the Civil Procedure Rules (England & Wales) (formerly RSC Order 52).

23. Separately, **Order 40 Rule 3(1)** of the **Civil Procedure Rules (Kenya)** provides a limited, specific route where the alleged contempt consists of breach of an injunction**:**

> **"**In cases of disobedience, or of breach of any such terms, the court granting an injunction may order attachment and may also order imprisonment for a term not exceeding six months ..."
> This pathway is only available where there is disobedience of a subsisting injunction granted by the same court**."**

24. The Court of Appeal in Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] KECA 840 (KLR) held that committal for "breach of a judgment, order or undertaking" is brought by application notice in the same cause, which must set out separately and numerically each alleged act of contempt, be supported by affidavit evidence, and be personally served unless service is dispensed with by the court.

25. The Supreme Court in Githiga & 5 others v Kiru Tea Factory Company Ltd [2023] KESC 41 (KLR)**,** clarified the above position and held that courts have inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court.

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26. It is settled (see, for example, **Mutitika v Baharini Farm Limited [1985] KLR 227**) that for contempt to be established, the following elements must be proved:

a. The order must be clear and unambiguous.
b. The alleged contemnor must have had proper notice of the terms of the order.
c. The breach must be proved beyond reasonable doubt.
d. The contemnor must be shown to have acted in breach of the order deliberately and willfully

27. In **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**, the court emphasized that contempt proceedings are quasi-criminal in nature and the standard of proof is higher than the balance of probabilities but not as high as beyond reasonable doubt. A similar finding was arrived at in Mutitika v Baharini Farm Ltd [1985] KECA 60 (KLR), where the Court of Appeal stated as follows regarding the need to satisfactorily prove contempt of Court: -

> "A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time– honoured phrase, it must be proved beyond reasonable doubt."

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28. Applying the above principles in the present case, the Court notes that the Applicants rely on the orders issued by the Magistrate's Court on **13th May 2024**, directing the release of the vehicles and the provision of loan statements.

29. The Respondents contend that those orders were complied with and that the vehicles were released to the Plaintiffs. They

further argue that the orders did not impose a continuing injunction restraining repossession of the vehicles thereafter.

30. From the material placed before the Court, the orders of 13 May 2024 required the Respondents to release the vehicles and furnish loan statements within a specified period. The Applicants have not placed before the Court clear evidence demonstrating that those directives were not complied with when issued.

31. On the other hand, the Respondents have exhibited release letters and statements. Whether those statements were adequate or accurate is a matter for trial, but the fact of provision means that the obligation was, in substance, performed.

32. Further, the Court agrees with the Respondent's submissions that the court order relied on by the Applicant was self-executing and time-bound (within 30 days from the date thereof). The Court orders did not contain any ongoing injunction against future repossession. Once performed, the order was spent and could not form the basis of contempt one year later.

33. Moreover, a scrutiny of the orders in question (the orders of 22 March 2024 and 13th May 2024) reveals that they did not contain an express restraining order prohibiting the Respondents from exercising their contractual rights under the financing agreements thereafter.

34. In those circumstances, the Court is not satisfied that the Applicants have established deliberate disobedience of a court order.

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35. The prayer seeking to cite the Respondents for contempt of court therefore fails.

Whether the remedy of stay is available in this case

36. The Applicants also seek an order for stay of execution in respect of the repossession and intended sale of the suit motor vehicles.

37. A stay of execution is a procedural remedy governed principally by **Order 42 Rule 6 of the Civil Procedure Rules**, which serves a narrow and defined purpose, namely, to suspend the enforcement of a decree or order issued by a court, pending appeal or pending further proceedings in the same court.

38. The order of stay presupposes the existence of a judgment, order, or decree of a court capable of being executed, whether through attachment, sale, committal, or any other mode of execution recognized under Order 22 of the Civil Procedure Rules. It cannot be granted in a vacuum, nor can it be used to restrain acts taken outside the authority of a court decree.

39. In the present case, it is clear from the record that the Respondents' repossession of the suit motor vehicles was not carried out pursuant to any judicial order of execution or decree, but it was an action under **Clause 14.1 of the parties' Asset Finance Agreements**, which grants the financier (the Respondent herein) contractual rights to repossess the financed assets upon default.

40. The repossession, in this case, therefore, constituted contractual enforcement, not execution in the legal sense contemplated under the Civil Procedure Rules. The Court is

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therefore not being asked to suspend a judicial process of execution, but rather to intervene in a contractual self-help remedy. As the Court of Appeal cautioned in Eric V.J. Makokha & 4 others v Lawrence Sagini & 2 others [1994] KECA 75 (KLR), an order of stay cannot be granted where no execution exists in law.

41. The Applicants argued that the earlier orders issued by the Magistrate's Court, namely the interim order of 22nd March 2024 and that of 13th May 2024, were violated, thereby justifying a stay. However, from the record, it is plain that the interim order of 22nd March 2024 only stayed the sale of the vehicles, not repossession. The Applicants have not demonstrated that any sale has taken place.

42. Further, the directive of 13th May 2024 required the release of the vehicles and the provision of loan statements within 30 days. Again, it is clear from the record that the order was time-bound and self-executing, and did not impose an ongoing restraint against future repossession. The question of whether compliance was adequate is a factual issue for trial, but the order was not an injunction.

43. Consequently, the Court finds that there is no subsisting decree or executable order whose operation can be stayed. To grant a stay in these circumstances would amount to issuing an order in vain, contrary to the authority in **Eric V.J. Makokha & 4 others v Lawrence Sagini & 2 others** (supra).

44. For these reasons, the prayer for stay of execution is clearly misconceived and cannot lie, as there is nothing executable to stay.

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Whether the Applicants are Entitled to Injunctive Relief

45. The Applicants sought interlocutory injunctive relief restraining the Respondents from selling, alienating, transferring, disposing of, or otherwise interfering with the suit motor vehicles pending the hearing and determination of the suit.

46. The principles governing the grant of interlocutory injunctions are well settled and were articulated in **Giella v Cassman Brown & Co Ltd (1973) EA 358**, where the Court held that an applicant must demonstrate a prima facie case with a probability of success, that they will suffer irreparable injury which would not adequately be compensated by an award of damages; and if the court is in doubt, the application should be decided on a balance of convenience.

47. The meaning of a *prima facie case* was explained by the Court of Appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** 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 by the opposite party as to call for an explanation or rebuttal."

48. The Court of Appeal further clarified in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR** that the three principles set out in *Giella v Cassman Brown* are to be applied sequentially, and that if a prima facie case is not established, the court need not proceed to consider the other two limbs.

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49. Regarding the existence of a prima facie case, the Applicants contend that the Respondents irregularly repossessed the subject motor vehicles despite the Applicants having substantially serviced the loan facilities and despite existing court orders requiring the Respondents to release the vehicles and furnish updated loan statements.

50. On their part, the Respondents maintain that the repossession of the vehicles was undertaken pursuant to their contractual rights under the financing agreements.

51. From the parties' arguments, the Court is of the view that the issues raised by the Applicants are substantive, warranting preservation of the subject matter. First, there exists a clear dispute as to the correctness of the loan accounts. While the Applicants allege substantial overpayment in the sum of Kshs. 8,391,182 by the 2nd Applicant, the Respondents, on the other hand, avers of outstanding balances, Kshs **8,934,620.08** for the 1st Applicant and **Kshs 7,664,360.78** for the 2nd Applicant. These are issues that require determination at merit trial.

52. Secondly, the contention that the Respondents failed to furnish true and updated loan statements and amortization schedules as required under the court order by the lower court, thereby undermining their ability to verify the state of indebtedness, also requires scrutiny at trial.

53. Third, the Court notes that repossession occurred during the pendency of proceedings. Although the court orders in question did not expressly restrain repossession, the context raises legitimate issues requiring full ventilation at trial.

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54. On irreparable harm, ***Ngururman*** defines it as harm that cannot be reasonably compensated by damages or whose loss cannot be quantified with sufficient accuracy. Here, while it is correct, as argued by the Respondents, the motor vehicles are typically monetizable assets, the circumstances of this case reveal that the harm extends significantly beyond the vehicles' market value.

55. The Applicants contend that they rely on the vehicles to generate income, honour contractual obligations, pay employees, and sustain their business as going concerns. The Court agrees that the deprivation of these essential operational assets, particularly before reconciliation of disputed accounts, would disrupt business continuity, result in loss of clients' goodwill, and lead to broader financial and operational collapse.

56. These consequential losses are neither easily quantifiable nor readily compensable. The Court in **Hassan Zebedee v Patrick Mwangangi Kibaiya (2014) eKLR** emphasized that damages are not an automatic substitute where the breach results in disruption that goes beyond mere monetary loss.

57. Accordingly, the Court is persuaded that the Applicants have demonstrated a likelihood of suffering irreparable harm if injunctive relief is denied.

58. Even if the Court were in doubt, the balance of convenience would favour the preservation of the suit properties. The Respondents, as secured creditors, remain protected by their contractual and statutory rights, which can be fully vindicated upon trial should default be proven. Their financial claims are quantifiable and enforceable.

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59. On the other hand, the Applicants stand to lose the very substratum of their business operations if the vehicles are disposed of before the determination of the dispute.

60. Preservation of the motor vehicles, therefore, ensures that the subject matter remains intact, allowing the Court to administer substantive justice without the risk of irreparable prejudice to either side.

61. In those circumstances, the balance of convenience tilts in favour of preserving the subject matter of the suit pending the hearing and determination of the case.

62. My finding above notwithstanding, the Court is mindful of the fact that vehicles, by their very nature, are wasting and depreciating assets, and prolonged interlocutory preservation orders may result in significant deterioration of their value. In the circumstances, the Court finds it prudent to grant a limited preservatory order coupled with an order for expedited hearing of the case.

FINAL ORDERS:

63. In the result, and for the reasons set out above, the Court partially allows the Notice of Motion dated 19 December 2025 as follows:

   i. The objection that the Notice of Motion is an omnibus application is hereby overruled.
   ii. The prayers seeking to cite the Respondents, or any of their officers, for contempt of court are hereby declined.
   iii. The prayers for stay of execution are declined
   iv. A temporary injunction is hereby granted, restraining the Respondents, whether by themselves, their agents,

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servants, or assigns, from selling, disposing of, alienating, transferring, or in any manner interfering with the suit motor vehicles pending the hearing and determination of the main suit, subject to the following conditions: -

(a) The matter shall be fixed for Case Management Conference within fourteen (14) day**s** from the date hereof.
(b) The hearing of the suit shall commence within sixty (60) days from the date hereof, unless otherwise directed by the Court for reasons to be recorded.

v. Costs of the application shall be in the cause.

64. It is so ordered.

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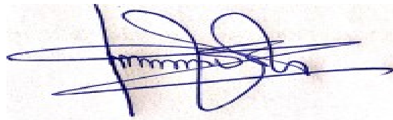
SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

12TH DAY OF MARCH, 2026



ADO MOSES

JUDGE

In the presence of:

Khisa ……………for the Applicant

Njiru ……………for the Respondent

Moses……….C/A