

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT VOI**  
**CIVIL APPEAL NO. E064 OF 2025**

**PETER KAMAU.....APPELLANT/APPLICANT** **GITIHA**

**=VERSUS=**

**MAGDALINER TABUTANY KELWON AND**

**ELIJAH KELWON CHEBURET (Suing as the Administrators of the Estate of**

**the Late ELIJAH KELWON CHEBURET.....1<sup>ST</sup> RESPONDENT**

**CHOGA CHINDORO.....2<sup>ND</sup> RESPONDENT**

**JOSHUA MATHENGE.....3<sup>RD</sup> RESPONDENT**

**EAST AFRICAN INSTITUTE OF AFRICAN STUDIES.....4<sup>TH</sup> RESPONDENT**

**NCBA BANK KENYA PLC.....5<sup>TH</sup> RESPONDENT**

**JOSEPH MUIRI KARIUKI.....6<sup>TH</sup> RESPONDENT**

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**(Being an appeal from the Ruling of Hon. A. M. OBURA (CM) in VOI CMCC NO. E249 of 2022 delivered on 7<sup>th</sup> November 2025)**

**JUDGMENT**

1. This is an appeal arising from a Ruling from two objection proceedings applications dated 2/9/2025 by the Appellant herein, **PETER GITIHA** and another Application dated 3/9/2025 by two other objectors namely **JAMES THUO GUTUNGA** and **JOSEPH MUIRU KARIUKI**.
2. This appeal focuses on the objection by the Appellant herein, **PETER GITIHA KAMAU**.
3. The Appellant herein objected to the sale of M.V Reg No. KCY 289C on the basis that the said vehicle is his property with **TAI SAVINGS & CREDIT COOPERATIVE SOCIETY LTD**.
4. The Applicant Appellant/Objector's case in summary was that he has a legal and equitable interest in the subject motor vehicle having purchased it on 8/5/2024 for a consideration of Kshs. 2,800,000 through a loan take over arrangement with NCBA Bank after the 3rd defendant in VOICMCC NO. E249 of 2022 defaulted in the hire purchase terms.
5. The Appellant stated that he was not a party to VOI CMCC NO E249 of 2022 and stood to be divested of his property if the objection proceedings were not allowed.

6. The Respondents in their submissions contended that the Appellant's Application was based on falsehoods and was calculated to defeat the course of justice.
7. They further stated that the alleged sale of M.V Reg No KCY 289C was caught up by the doctrine of *lis pendens* and cannot be protected by law.
8. Further, that judgment was entered in favour of the Respondents in the fatal accident case on 25/3/2024 against the 3rd defendant.
9. The Respondents also submitted that one DANIEL WAKAHIA who was a director of the 3rd Defendant was party to the proceedings and was aware of the judgment and he purported to sell the motor vehicle to the Appellant.
10. They further submitted that the Appellant ought to have been diligent in the circumstances and he is bound by the decree issued in VOI CMCC NO E249 of 2022.
11. The trial court found that the judgment in VOI CMCC NO 249 of 2022 was delivered on 25/3/2024.
12. The 3rd defendant sold the motor vehicle to the Appellant on 8/5/2024 when the matter was still unsettled.

13. The trial court held that, that fact alone was sufficient to demonstrate an intention to subvert the course of justice.
14. The trial court considered the doctrine of *lis pendens* and relied upon the case of **RUTH KINYUA VS PATRICK THUITA GACHURE & ANOTHER [2015] eKLR** and also the case of **GLEN PLAINS COMPANY LTD & 2 OTHERS VS ECOBANK KENYA LTD [2017] eKLR** and found that the alleged sale cannot stand in court.
15. The trial court found that the Appellant cannot claim to be an innocent purchaser for value without notice of the decree against the 3<sup>rd</sup> Defendant, **EAST AFRICA INSTITUTE OF CERTIFIED STUDIES.**
16. The trial court dismissed the objection proceedings and concluded that the whole transaction was calculated to defeat lawful execution and justice due to the Respondent herein.
17. The Appellant has appealed against the said Ruling on the following grounds;

- (i) That the trial Magistrate erred by issuing an undated ruling, violating Order 21 Rule 3(1) of the Civil Procedure Rules, making the ruling a nullity.
- (ii) The trial Magistrate failed to recognize that the appellant had already acquired equitable title, control, and ownership of the subject PSV vehicle KCY 289C before any execution process began.
- (iii) The trial Magistrate dismissed the appellant's objection motion without considering the merits of his evidence, effectively condemning him unheard and causing a miscarriage of justice.
- (iv) The trial Magistrate ignored the Supplementary Affidavit (sworn on 18th September 2025) in which the appellant proved he was an innocent purchaser for value without notice of the proceedings.
- (v) The trial Magistrate disregarded the appellant's written submissions and binding legal precedents, violating the doctrine of stare decisis under Article 163(7) of the Constitution of Kenya.

- (vi) The trial Magistrate failed to consider that the vehicle was seized without any Proclamation having been served on the appellant, breaching Rule 12(1) of the Auctioneers Rules.
- (vii) The trial Magistrate overlooked that the seizure amounted to a criminal act of carjacking, thereby effectively endorsing illegality contrary to the principle *ex turpi causa non oritur actio*.
- (viii) By bundling the appellant's motion (dated 2nd September 2025) together with another objector's motion, the trial Magistrate denied the appellant a fair hearing on his own merits, violating Articles 25(c), 48, and 51(1) of the Constitution.
- (ix) The trial Magistrate misapplied Order 22, Rule 51(1) by assuming the appellant knew of the judgment and decree, despite his sworn denial on oath.
- (x) The trial Magistrate failed to note that no injunction under Order 40 Rules 1 & 2 had been filed to restrain disposal of the vehicle, so the

appellant cannot be blamed for having purchased it innocently through NCBA Bank.

- (xi) The trial Magistrate delayed rendering the ruling on the objection proceedings beyond the period prescribed under Order 22, Rule 54 of the Civil Procedure Rules.
- (xii) (Alternatively) By adjourning the proceedings beyond the statutory period, the trial Magistrate violated the appellant's right to an expeditious hearing under Article 50(2)(e) of the Constitution.
- (xiii) The trial Magistrate dismissed the objection while alleging collusion between the appellant and the 3rd defendant, despite no evidence of such collusion being tabled by the respondents.
- (xiv) The trial Magistrate was biased against the appellant, issuing the ruling without considering that no lawful execution had been levied against the appellant.
- (xv) The trial Magistrate failed to hold that, since no Proclamation was issued to the appellant at all, the

entire execution process was a nullity ab initio under the Auctioneers Rules.

(xvi) The trial Magistrate dismissed the objection without assessing the appellant's legal or equitable interest in the attached vehicle as mandated by Order 22 Rule 53.

(xvii) The trial Magistrate departed from known principles applicable to objection proceedings by failing to first establish whether the appellant had met the required legal and precedential threshold.

(xviii) The trial Magistrate based the ruling on the unproven assumption that the vehicle belonged to the 3rd defendant, without any sworn evidence from the respondents.

(xix) The trial Magistrate exercised discretion perversely by failing to state whether the objection had been lifted, contrary to Order 21 Rule 53.

(xx) The trial Magistrate was openly biased against the appellant.

(xxi) The trial Magistrate conducted the proceedings in a manner that was unfair, oppressive, and

prejudicial to the appellant's right to a fair trial, contrary to Article 25(c) of the Constitution.

18. During the pendency of the appeal, the Interested party (IP) made an application to be enjoined and the application was allowed by consent. The parties filed written submissions in this appeal.
19. Peter Gitiha Kamau, the appellant, submitted that he is appealing a ruling made by the trial Magistrate in Voi on 7th November 2025.
20. The trial Magistrate dismissed the appellant's objection proceedings, which challenged the attachment of his public service vehicle, registration KCY 289C, by auctioneers acting for the respondents, who are decree holders in an earlier suit.
21. The appellant argued that the attachment and subsequent dismissal of his objection were fundamentally flawed for several reasons.
22. First, he points out that the Magistrate's ruling was undated, which he contends violates Order 21 Rule 3(1) of the Civil Procedure Rules and, relying on Court of Appeal and High Court precedents, renders the ruling a nullity.

23. Second, and most critically, he argues that no proclamation was ever served on him before the auctioneer seized his vehicle, contrary to Rule 12(1) of the Auctioneers Rules.
24. He cites case law holding that such non-compliance makes the entire execution process a nullity and that the court should set it aside *ex debito justitiae*.
25. The appellant further describes the seizure as a criminal act of carjacking, involving assault and abduction of his driver, which he reported to the police.
26. He submitted that this illegality cannot be sanctioned by the court under the doctrine of *ex turpi causa non oritur actio*.
27. He also complains that the Magistrate failed to consider his evidence, including his supplementary affidavit and supporting documents such as insurance covers, which he says proved his legal and equitable ownership as an innocent purchaser for value without notice of the court proceedings.
28. He alleges that the Magistrate bundled his objection together with a separate objection by another party,

denied him a fair hearing, and violated his constitutional rights under Articles 25(c), 48, and 50.

29. Additionally, he contends that the Magistrate ignored binding precedents he had cited, thereby breaching the doctrine of stare decisis.

30. The appellant maintains that the trial court did not address the core issue that he was never made a party to the original suit, no notice to show cause was issued to him, and the warrant of attachment was never served on him.

31. He concludes that the appeal should be allowed, the attachment set aside, his vehicle restored to him, and costs awarded against the respondents for their flagrant breaches of the law.

32. The 1st Respondent in his submissions started by arguing that the appellant's appeal has fundamentally missed the point, as the central issue is the correct interpretation of the doctrine of Lis Pendens.

33. They assert that the appellant purchased a motor vehicle from the Judgement Debtor after a judgment had already

been entered but remained unpaid, and that this purchase was an attempt to subvert justice.

34. Citing legal texts like Mulla & Gour on the Indian Transfer of Property Act, the 1st Respondent explains that the doctrine binds any person who purchases property that is the subject of ongoing litigation, regardless of whether they had actual notice of the suit.

35. The effect is not to nullify the sale but to render it subservient to the rights of the parties in the litigation, meaning the appellant's claim to the vehicle cannot supersede the decree holder's right to execution.

36. The 1st Respondent contends that the trial Magistrate correctly applied this doctrine, and therefore the appellant cannot be considered an innocent purchaser for value without notice.

37. They argue that the appellant entangled himself in the litigation by buying the vehicle from a judgment debtor who was actively trying to dispose of assets to avoid paying the decree.

38. To allow the appeal would open a “floodgate” of litigants rushing to sell off assets post-judgment, leaving successful parties with a barren, unenforceable decree.
39. The 1st Respondent further points out that the vehicle was still registered in the name of the Judgment Debtor at the time of attachment and auction, and the purported sale agreement was with a director of the debtor company, revealing a coordinated effort to defeat justice.
40. Addressing a technical ground of appeal, the 1st Respondent argues that the trial court’s ruling dated 7th November 2025 was not a nullity despite any alleged omission of the date.
41. They rely on case law, including **Wanguhu v. Kania**, to show that such an irregularity does not vitiate a ruling, especially when it has not prejudiced any party.
42. They also note that the appellant’s own Record of Appeal appears to have been distorted by omitting key parts of the ruling, and they invite the appellate court to compare it with the original lower court file, suggesting this alone could warrant striking out the appeal.

43. The 1st Respondent then emphasized that the auction of the motor vehicle was completed, and the hammer fell on 18th November 2025.
44. They argued that once the auctioneer's hammer falls, the sale becomes absolute, and the equity of redemption is extinguished.
45. The vehicle was sold to a bona fide third-party purchaser, Stephen Maina Wamaitha, who holds a certificate of sale.
46. Since this purchaser is not a party to the appeal, any order affecting his rights would violate his constitutional right to a fair hearing.
47. The appellant's remedy, if any, would be a claim for damages against the Judgment Debtor, not recovery of the vehicle itself.
48. Furthermore, the appellant's attempt to introduce a logbook in his name, issued on 21st November 2025, is challenged as new evidence introduced without leave of the court, which should be expunged from the record.
49. Regarding ownership, the 1st Respondent argued that registration under Section 8 of the Traffic Act is not conclusive proof of ownership.

50. Citing cases such as **Nancy Ayiemba Ngaira v. Abdi Ali and Samwel Mukunya Kamunge v. John Mwangi Kamuru**, they note that evidence of actual, beneficial, or possessory ownership can rebut the presumption of registered ownership.
51. Here, the vehicle was still registered in the Judgment Debtor's name at the time of the auction, and the fall of the hammer transferred ownership to the successful bidder, defeating the appellant's claim.
52. The appellant's argument that he is a bona fide purchaser collapses because the purchase occurred during active litigation and without due diligence.
53. The 1st Respondent concludes that the appeal is groundless and an abuse of process.
54. They pray that the appeal be dismissed with costs, arguing that the appellant cannot sanitize an illegality or seek the court's aid when he has come with unclean hands, having participated in a scheme to defeat a valid court judgment.
55. The proper course is for the appellant to pursue any claim for refund or damages against the Judgment Debtor, as

the subject motor vehicle has already been lawfully sold to an innocent third party.

56. The Interested Party, Stephen Maina Wamaitha, opposed the appeal in full, arguing that the trial Magistrate correctly dismissed the Appellant's objector proceedings.

57. The Interested Party states that he legally purchased Motor Vehicle Registration No. KCV 289C at a public auction on 18th November 2025, conducted by a licensed auctioneer pursuant to valid court warrants.

58. He paid Kshs. 1,300,000, was issued a Certificate of Sale, and subsequently had the vehicle registered in his name.

59. He contends that he is a bona fide purchaser for value without notice, as defined in Black's Law Dictionary and affirmed in Kenyan case law, and that under Order 22 Rule 64 of the Civil Procedure Rules, the sale became absolute upon payment.

60. He further argued that the auction process was lawful, citing the proclamation, notification of sale, and newspaper advertisement.

61. Regarding the Appellant's claim, the Interested Party submitted that any alleged sale between the Appellant

and the judgment debtor (4th Respondent) on 8th May 2024 occurred after the court had issued a decree on 25th March 2024 and during active litigation, making it void ab initio under the doctrine of lis pendens.

62. Therefore, the Magistrate was right to dismiss the objector application. The Interested Party also notes that if any irregularity occurred, the Appellant's remedy lies in damages against the auctioneer under Section 26 of the Auctioneers Act, not in challenging the purchaser's title.

63. He asks the High Court to dismiss the appeal, uphold the trial court's ruling, and award him costs.

64. I carefully considered the Record of Appeal, the rival submissions of the parties, and the original record from the lower court.

65. The issues that fall for determination in this appeal are as follows;

**(i) Whether the trial court's ruling was a nullity for want of dating,**

**(ii) Whether the doctrine of lis pendens was properly applied to the circumstances of this case,**

**(iii) Whether the execution process complied with the mandatory provisions of the Auctioneers Rules, and ultimately,**

**(iv) Whether the appellant is entitled to the restoration of the subject motor vehicle.**

66. On the first issue, while the failure to date the ruling contravenes Order 21 Rule 3(1) of the Civil Procedure Rules, this Court finds that such an irregularity, without demonstrable prejudice to the appellant, is not fatal to the validity of the ruling, as the substance of the decision remains intact and discernible, and this ground alone would not vitiate the proceedings.

67. Turning to the central issue of the doctrine of lis pendens, the respondents placed heavy reliance on this doctrine to argue that the appellant's purchase of the motor vehicle on 8th May 2024, subsequent to the entry of judgment on 25th March 2024, was void and calculated to subvert justice.

68. However, it is a well-settled principle of law in Kenya that the doctrine of lis pendens, codified under Section 52 of the Transfer of Property Act, 1882 (which remains

applicable in our jurisdiction), only applies to property which is the specific subject matter of the litigation in which the dispute directly concerns the title to or ownership of that property.

69. The underlying suit, Voi CMCC No. E249 of 2022, was a claim for damages arising from a fatal accident. The motor vehicle registration number KCY 289C was merely an asset of the judgment debtor and was not the res or subject matter of the suit itself.
70. The motor vehicle that caused the accident was KCT 032G TOYOTA HIACE and not KCY 289C which did not feature in the Trial courts proceedings.
71. The cases relied upon by the trial court, such as **Ruth Kinyua v Patrick Thuita Gachure & Another [2015] eKLR** and **Glen Plains Company Ltd & 2 Others v Ecobank Kenya Ltd [2017] eKLR**, are therefore distinguishable as they concerned disputes where the property in question was directly the subject of competing claims or ownership in the principal suit.
72. Consequently, the appellant was not legally barred from purchasing the vehicle simply because a money judgment

had been entered against the vendor, and the trial Magistrate erred in law by extending the doctrine of *lis pendens* to cover a mere asset of a judgment debtor.

73. On the conduct of the execution process, this Court finds that the attachment was fundamentally flawed for non-compliance with Rule 12(1) of the Auctioneers Rules, 1997, which provides that before attachment of movable property, the auctioneer shall serve upon the judgment debtor a proclamation of attachment containing a notice of not less than seven days within which the judgment debtor may settle the debt.

74. The requirement for proclamation is not a mere technicality but a mandatory procedural step designed to inform the owner or possessor of the impending seizure and to afford an opportunity to avert the attachment.

75. The appellant, who was in possession of the vehicle and had asserted ownership, was never served with a proclamation notice.

76. The failure to serve a proclamation notice rendered the subsequent attachment and sale a nullity.

77. Moreover, an objector who demonstrates a legal or equitable interest in attached goods is entitled to have the attachment lifted where proper procedure has not been followed.
78. The appellant herein provided evidence of a loan takeover arrangement with NCBA Bank, insurance cover documents, and a sale agreement, all of which pointed to his beneficial interest in the vehicle, yet the trial court dismissed his objection without properly evaluating this evidence.
79. The court further erred by failing to recognize that a third party who is not a party to the original suit cannot have their property seized in execution of a decree without following the procedure under Order 22 of the Civil Procedure Rules, which requires a notice to show cause before attachment of property belonging to a non-party.
80. Regarding the appellant's claim to be an innocent purchaser for value without notice, this Court finds merit in his submissions.
81. The three essential requirements for protection under this equitable doctrine are that the purchaser must have

acquired a valid legal title or interest, must have carried out due diligence to determine the lawful owner, and must have paid valuable consideration for the property.

82. The appellant acquired the vehicle through a formal loan takeover arrangement with a financial institution, paid a consideration of Kshs. 2,800,000, and there is no evidence on record to suggest that he had actual or constructive notice of the unsatisfied decree at the time of the transaction.

83. The mere fact that the vendor was a judgment debtor does not, without more, impute notice to the appellant.

84. The trial court's finding of collusion or an intention to subvert justice was based on conjecture rather than evidence, and the court misdirected itself by assuming the appellant's knowledge of the proceedings without any sworn evidence to that effect.

85. A bona fide purchaser for value without notice is entitled to protection of their interest even if the vendor's title is later found to be defective, provided the purchaser acted honestly and with due diligence.

86. In the present case, the appellant conducted a transaction through a regulated financial institution, and there was no evidence that he was party to any fraud or that he deliberately sought to defeat the respondents' decree.

87. Concerning the subsequent sale of the vehicle to the interested party, Stephen Maina Wamaitha, this Court notes that an illegal execution cannot confer a valid title.

88. While the fall of the auctioneer's hammer generally signals the end of the equity of redemption for a judgment debtor, it cannot sanitize a sale where the property of a third party, who was never a party to the suit, was unlawfully seized.

89. The principle of *ex debito justitiae* requires that the court set aside proceedings that are a nullity, as the court has an inherent jurisdiction to prevent an abuse of its process and to ensure that its procedures are not used to perpetrate an illegality.

90. Since the attachment was void for want of proper proclamation and for targeting property belonging to a non-party without following the requisite procedure under

Order 22 of the Civil Procedure Rules, the subsequent auction sale to the interested party must also fall, and the interested party's remedy, if any, lies in damages against the auctioneer under Section 26 of the Auctioneers Act, not in retaining property that was unlawfully seized.

91. In light of these findings, this Court hereby sets aside the ruling and orders of the trial court delivered on 7th November 2025.

92. The appellant's objection proceedings are hereby allowed, and the attachment and subsequent sale of Motor Vehicle Registration Number KCY 289C are declared null and void ab initio.

93. The vehicle is ordered to be restored to the appellant forthwith.

94. On the question of costs, given the nature of the proceedings and the fact that the interested party acted in good faith as a purchaser at a public auction, each party shall bear their own costs of this appeal.

95. Orders to issue accordingly.

**Dated, Signed and Delivered online via Microsoft Teams at Voi this 10<sup>th</sup> Day of April, 2026.**

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**A. N. ONGERI**

**JUDGE**

**In the presence of:**

.....for the Appellant

.....for the

Respondents

.....for the Interested

Party.

ORIGINAL