

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPELLATE DIVISION

**CIVIL APPEAL (MISC. APPLICATION) NO. HCCA E078 OF
2026**

MWITI TITUS

JACOB.....APPELLANT/

APPLICANT

VERSUS

SOLOMON WAIRERI NJOROGE

T/A FREEMAN AUCTIONEERS.....1ST

RESPONDENT

SIMPLEPAY CAPITAL LIMITED.....2ND

RESPONDENT

RULING

Background

1. The Applicant obtained a loan facility amounting to Kshs. 5,208,941 from the 2nd Respondent which loan was secured by motor vehicle Registration Number KDB 111A.
2. Following default in repayment, the 2nd Respondent instructed the 1st Respondent auctioneer to repossess the motor vehicle.

3. The repossession was undertaken pursuant to orders issued in Milimani Magistrates Court Misc. Application No. E576 of 2025 on 15th October 2025.
4. The Applicant subsequently filed proceedings seeking to stop the repossession but the application was dismissed on 13th February 2026, after which the repossession was effected. The repossession precipitated the filing of the application that is the subject of this ruling.

The Application

5. The present application seeks to compel disclosure of the vehicle's location and inventory pending the hearing of the appeal. The application is brought through the Applicant's Notice of Motion dated 24th February 2026 filed under Sections 1A, 1B and 63(e) of the Civil Procedure Act, Cap 21, Order 51 Rule 1 of the Civil Procedure Rules.
6. The Applicant seeks several orders relating to the repossession and storage of motor vehicle registration number KDB 111A repossessed by the Respondents pursuant to a court order issued by the Milimani Chief Magistrates Court.
7. The Applicant seeks the following orders:
 - a) **Spent.**
 - b) ***That this Court issue a mandatory injunction compelling the 1st Respondent (auctioneers) to disclose the precise location where the motor vehicle is stored.***

- c) That the Court compel the auctioneers to provide a full inventory of the motor vehicle to the owner.**
- d) That the Court direct the Respondents to transfer the motor vehicle from the undisclosed yard to the Directorate of Criminal Investigations (DCI) Central Yard pending the hearing of the application.**
- e) That the Court grant such further orders as it deems fit and just.**
- f) That the costs of the application be borne by the Respondents.**

8. The application is supported by the Supporting Affidavit sworn by the Applicant on 24th February 2026 and a Further Affidavit sworn on 4th March 2026.

9. The Applicant states that he is the registered owner of motor vehicle KDB 111A, as evidenced by a copy of the logbook annexed to the affidavit.

10. The Applicant avers that pursuant to a ruling delivered on 13th February 2026 by Hon. Stephen K. Onjoro at the Milimani Chief Magistrates Court, the Respondents repossessed the motor vehicle in execution of earlier ex parte orders issued on 15th October 2025.

11. The Applicant contends that following the repossession, the auctioneers did not take or provide an inventory of the motor vehicle and that he was not provided with any record of assessment of the motor

vehicle. He adds that the Respondents refused to disclose the location where the vehicle is stored.

12. The Applicant further asserts that he filed a stay application on 20th February 2026, and the court ordered that the status quo be maintained pending an inter partes hearing scheduled for 27th April 2026.
13. According to the Applicant, the refusal, by the Respondents, to disclose the location of the motor vehicle or provide the inventory violates the statutory duties imposed on auctioneers under the Auctioneers Act and the Auctioneers Rules, 1997.
14. The Applicant states that there is a risk that the motor vehicle may be disposed of without due process and that he may suffer irreparable loss and damage unless the court intervenes.
15. The Applicant also alleges that the Respondents charged exorbitant interest and penalties on the loan facility advanced to him.
16. He states that while the original loan was Kshs. 5,208,941, he had repaid Kshs. 1,600,000 but that due to interest allegedly charged at 8% per month (equivalent to 96% per annum) and penalties of 5% per week, the outstanding amount escalated significantly.
17. The Applicant contends that the Respondents' actions violate Article 47 of the Constitution, which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

18. The Applicant relied on Rules 10 and 12 of the Auctioneers Rules, 1997, which require auctioneers to prepare and provide an inventory of attached goods.

19. In particular, Rule 12(1) of the Auctioneers Rules, 1997 which provides that:

“Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—

(a) record the court warrant or letter of instruction in the register;

(b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed

(c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction.”

20. The Applicant submitted that the Respondents’ refusal to provide an inventory and disclose the storage yard amounts to breach of statutory duty.

21. Reference was made to the case of **Lakeland Motors Ltd vs. Harbhajan Singh Sembi [1998] eKLR** where the Court held:

“There does not appear to be any provision in the Auctioneers Act, 1996 nor in the Auctioneers Rules, 1997 for dispensing with the foregoing rule [Rule 12 (1)(b)]. Yet the respondent proceeded to execute the decree and physically attach the applicant's movable goods without complying with the said rule. The flagrant disregard of the provisions of this rule smacks of gross irregularity in the respondent's execution process... It would be an abuse of the process of this Court if we were to countenance such an execution.”

22. The Applicant also cited **African Merchant Assurance Co. Ltd vs. Hezron Getuma Onsongo [2019] eKLR** where the Court stated:

“The auctioneers’ failure to prepare an itemized inventory of the goods attached indicating the condition of each specific item and the value thereof renders the purported attachment fatally flawed... This would ensure that there are no unnecessary disputes regarding what may or

***may not have been attached.
It would also ensure that there is transparency
in the subsequent sale of such attached goods
and the proceeds thereby realized.”***

The Respondents' Case

23. The Respondents opposed the application through a Replying Affidavit sworn by a Director of the 2nd Respondent **Ms. Susan Karimi** who avers that the repossession of the motor vehicle was lawful and procedural, having been undertaken pursuant to a valid court order issued on 15th October 2025 in Milimani Magistrates Court MCCCmisc E576 of 2025.
24. The Respondents further state that the motor vehicle had been pledged as security for a loan advanced to the Applicant amounting to Kshs. 5,208,941, and that the loan was secured through a registered charge on the logbook of the motor vehicle.
25. According to the Respondents, the Applicant defaulted in repaying the loan, which triggered their right to repossess the collateral.
26. The Respondents state that a proclamation notice dated 29th January 2026 was served on the Applicant who had earlier filed an application seeking to stop the repossession which application was dismissed by the court on 13th February 2026, thereby allowing the repossession to proceed.

27. The Respondents maintain that an inventory of the motor vehicle was taken at the time of repossession, but the Applicant declined to acknowledge or sign the same.
28. The Respondents further contend that the Applicant is seeking disclosure of the location of the motor vehicle merely to engineer a scheme to regain possession of the security without repaying the loan.
29. They also assert that the Applicant has engaged in forum shopping, having filed multiple applications relating to the same matter.
30. The Respondents submitted that the motor vehicle constitutes loan security, and transferring it to the DCI yard would effectively deprive the 2nd Respondent of its contractual right to repossess the collateral upon default.
31. The Respondents therefore argued that the Applicant has not demonstrated irreparable loss, since the motor vehicle serves as security for an outstanding debt.
32. The Respondents noted that the Applicant is attempting to regain possession of the security without repaying the loan and that the Applicant has not met the threshold for granting injunctive orders on appeal and that the Applicant did not offer security for due performance of the decree.
33. The Respondents also seek to have the Applicant's Further Affidavit expunged from the court record for having been filed without leave of the Court.

Issues for Determination

34. From the pleadings and submissions, I find that the following issues arise for my determination:

- a) ***Whether the Applicant has met the threshold for grant of injunctive orders pending appeal.***
- b) ***Whether the Court can stay a negative order.***
- c) ***Whether the Applicant's Further Affidavit should be expunged from the record.***
- d) ***Who should bear the costs of the application.***

Analysis and Determination

35. Order 42 Rule 6(2) of the Civil Procedure Rules (CPR) requires an applicant for orders for stay of execution to demonstrate substantial loss, absence of delay, and provision of security.

36. Rule 12(1) of the Auctioneers Rules 1997 provides that:

“Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—

(a) record the court warrant or letter of instruction in the register;

(b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item...

(c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem

the goods by payment of the amount set forth in the court warrant or letter of instruction.”

37. In ***James Wangalwa & Another vs. Agnes Naliaka Cheseto*** [2012] eKLR the Court held:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions.

Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

38. In ***Bluesand Holdings Ltd vs. Mitei t/a Arap Mitei Advocates*** [2020] eKLR the Court held:

“The mere assertion that execution would prejudice him is insufficient to meet the threshold established in the aforementioned authorities. Substantial loss requires demonstration of how execution would fundamentally undermine the applicant's position beyond the ordinary deprivation that follows any judgment.”

39. In ***Western College of Arts & Applied Sciences vs. Oranga*** [1976] KLR 63 the Court held:

“But what is there to be executed under the judgment... the High Court has merely dismissed the suit with costs... There is nothing arising out of the judgment for this court in an application for stay to enforce or restrain by injunction.”

40. The principle that runs through the above cited cases is that an Applicant for injunction pending appeal must demonstrate substantial loss.

41. In the instant case, I note that the repossessed asset is a motor vehicle with ascertainable value. This means that any loss arising from its disposal can be compensated in damages.

42. Further, the Applicant did not offer any security for due performance of the decree.

43. I therefore find that the Applicant has not satisfied the threshold under Order 42 Rule 6(2) of CPR.

44. On whether the court can stay a negative order, I note that the impugned order of the magistrate's court merely dismissed the Applicant's application. In my humble view, such an order does not impose any positive obligation capable of stay. I am guided by the decision in the classic authority of ***Western College of Arts and Applied Sciences vs. Oranga & Others* [1976] KLR 63** where the court held that:

“In the instant case the High Court has not ordered any of the parties to do anything, or refrain from doing anything or to pay any sum. There is nothing arising out of the High Court judgment for this court, in an application for a stay, to enforce or to restrain by injunction.”

45. The principle in the above cited case has been reaffirmed in later decisions. In ***Co-operative Bank of Kenya Limited vs. Banking Insurance & Finance Union (Kenya)* [2015] KECA 353 (KLR)**, where Kantai JA stated that:

“An order for stay of execution is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a judgment. The delay of performance presupposes the

existence of a situation to stay - called a 'positive order' - either an order that has not been complied with or has partly been complied with."

46. On whether the Further Affidavit should be expunged on account of having been filed without leave of court, Order 51 Rule 14(3) provides that further affidavits require leave of court. The Applicant did not seek leave and I find that the affidavit was therefore irregularly filed.

47. Having considered the application, affidavits, submissions and authorities cited, I find that Notice of Motion dated 24th February 2026 is not merited and I therefore dismiss it with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

16/04/2026

FOR APPELLANT Miss Kemunto

FOR THE RESPONDENT Muteo

COURT ASSISTANT Abdirizak

Mention on 20th April 2026