

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL NO E015 OF 2015

**MATUMBEI SECONDARY
SCHOOL.....APPELLANT/APPLICANT**

=VERSUS=

DAVID NDIEMA.....RESPONDENT

Coram: Before Justice R. Nyakundi

DIRECTION

1. Before this court is a Notice of Motion brought to this court under Section 3A Civil Procedure Act Order 42 Rule 6 & all enabling provisions of law & Procedure:
 - i. *That this application be certified urgent and service thereof be dispensed with in the first instance*
 - ii. *That pending the inter parte hearing of this application there be an order of stay of execution of the Decree in Eldoret in Eldoret Small Claim Court Claim Number E508 of 2024. David Ndiema versus Board of Governor Matubei Secondary School, the warrants of Attachment issued by the said court on 23rd January 2026 against the applicant/appellant be suspended and the Respondent, his servants agents and or any other person acting on behalf of behalf of or through the Respondent, his servants agents and or any other person acting on behalf of or through the Respondent. Decree holder including Top leaf Auctioneers and/or its agents, to release mot vehicle KCH 709 Q Isuzu school Bus to the Applicant , unconditionally. iii. That At the inter partes hearing of this Application there be stay of execution of the Decree in this*

Eldoret Small Claim Court Claim Number E508 of 2024 David Ndiema versus Board of Governor Matumbei Secondary School pending the hearing and determination of this appeal

iv. That costs be in the cause

UPON THE GROUNDS THAT:

- a) Judgement in the small claim court was delivered on 5.9.2025 and aggrieved by the said judgment the Applicant preferred this Appeal*
- b) A warrant of Attachment was issued by the lower court on 23.1.2026 and served upon the Applicant on 3.2.2026 and the Applicants school bus seized on 4.4.2026*
- c) The Small Claims Court lacked jurisdiction to entertain the suit and, therefore, the judgment and all consequential orders thereto had been issued without jurisdiction*
- d) The seizure of Motor Vehicle on 4th February 2026 was glaringly illegal and un- procedural, the proclamation was made on 3rd February 2026*
- e) In addition, the Appellant is a public school under the Ministry of Education and its property Act may not be attached by virtue of Section 21, Government Proceedings*
- f) The Notification of Sale of Moveable Property dated 4th February 2026 and the Invoice/fee Note/Bill of Costs dated 4th February 2026 from Top Leaf Auctioneers was served upon the Applicant on 4th February 2026 and Motor vehicle KCH 709Q. School Bus, was proclaimed/impounded on 4th February 2026 at 10.00 am.*
- g) At the time of the accident the subject of this suit, Motor vehicle KCH 709Q, School Bus was insured with Takaful*

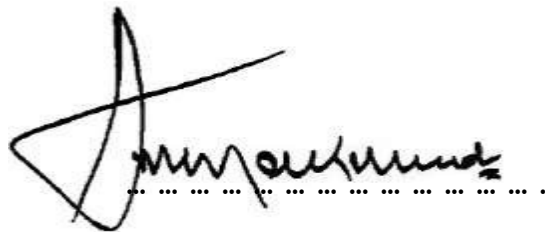
Insurance of Africa Limited Insurance Company vide Policy No. P/ELD/2023/102/148396 under Cap 405, Laws of Kenya, which policy was in force at all material times and in particular

on the 26th September, 2023 when the accident occurred involving the said motor vehicle, KCH 709Q, School Bus.

DIRECTION

- a) This application be served upon the Respondent for Inter parties hearing on
9.4.2026*
- b) That upon the Respondent filing the rejoinder affidavit or grounds of opposition the application be canvassed by brief submission.*
- c) The parties highlight the submissions on 9.4.2026*
- d) That there be interim stay of execution pending the hearing on the scheduled date.*

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 31ST
DAY OF MARCH, 2026**

A handwritten signature in black ink, appearing to read 'R. Nyakundi', is written over a horizontal dotted line. The signature is stylized and somewhat cursive.

R. NYAKUNDI

JUDGE