



Mumo v Mwove (Civil Appeal E069 of 2025) [2026] KEHC 5075 (KLR) (27 March 2026) (Ruling)

Neutral citation: [2026] KEHC 5075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E069 OF 2025
TM MATHEKA, J
MARCH 27, 2026**

BETWEEN

CHRISTONE MUENDO MUMO APPELLANT

AND

DICKSON MWOVE RESPONDENT

RULING

1. The Application for determination is dated 12/09/2025 and was filed under certificate of urgency. It is brought under Sections 3A, 79G & 95 of the *Civil Procedure Act* (CPA), Orders 22 Rule 22, 42 Rule 6, 50 Rule 6 & 51 Rule 1 & 3 of the Civil Procedure Rules 2010 and all other enabling provisions of the law. It seeks the following orders;
 - a. Spent.
 - b. That this honorable court be pleased to stay the execution of the ruling delivered on 02/09/2025 by Hon. J.M Gacheru (SRM) sitting at Tawa in PMCC No. 220 of 2017 pending the hearing and determination of the Appellant's appeal.
 - c. That similar orders do apply to PMCC No. s 221 of 2017, 222 of 2017 and 08 of 2018.
 - d. That the Application be heard inter partes on such dates and time as this honorable court may direct.
 - e. That the costs abide the outcome of the appeal.

The Application

2. The Application is supported by the grounds on its face and the Applicant's Affidavit sworn on 11/09/2025. He deposed that his Application dated 25/03/2025 was dismissed by the trial court on 02/09/2025 and being aggrieved with the said ruling, he instructed his advocate to appeal against it. Copies of the ruling and



Memorandum of Appeal are exhibited as CMM 1 & 3 respectively.

That, the intended appeal is merited, arguable and raises pertinent points of law and fact thus has overwhelming chances of success.

3. That, he is reasonably apprehensive that the Respondent may proceed and levy execution against him and render the appeal nugatory and cause him irreparable loss and damage. A letter is exhibited as CMM4. That, the lower court judgment should be settled by his insurance company as directed by the High Court sitting in Machakos in Petition E019 of 2024 (Machakos Petition). A copy of the conservatory order is exhibited as CMM 5.
4. That, the conservatory orders have been extended severally including but not limited to 29/10/2025. A copy of the order is exhibited as CMM6. That, he is a member of the 2nd Petitioner and insured with the 5th Respondent in the Machakos Petition. A copy of the letter dated 25/03/2025 from Wamasaa Travellers Ltd is exhibited as CMM 6. That, paragraph 5 of the High Court order makes it clear that; "...leave is hereby granted to the Petitioners to represent such of similar claimants having similar claims against the named insurance companies subjects of this matter." That, he is therefore covered by the conservatory orders.
5. That, by dint of the conservatory orders, no execution process should issue against him as it should be against his insurance company – Invesco Assurance Co. Ltd. That, it is only fair and just that he enjoys the same privileges and protection afforded by the law to the rest of the Petitioners. That, the Application is made in good faith and will not occasion prejudice to the Respondent.
6. He deponed that he stands to suffer great loss as there is likelihood that the Respondent will execute against him instead of pursuing the insurance company.

The Response

7. The Application is opposed through the Respondent's Replying Affidavit sworn on 26/09/2025. He deponed that the Application is bad in law, incompetent and an abuse of court process. That, the Applicant has not satisfied the conditions in Order 42 Rule 6 of the CPR. That, the Applicant has been using all manner of tricks to avoid paying the decretal sum since 2018.
8. That, the order issued in the Machakos Petition does not cover the Applicant for reasons that; the four primary suits being Tawa SRMCC 220/2017, 221/2017, 222/2017 & 8/2018 are not expressly listed in the said order; the Appellant's name is not listed in the said order and the accident vehicle, KBX 321X, is not listed in the said order. That, the Machakos Petition has been abused by every party to claim that he or she is a beneficiary.
9. That, to avoid the misuse of the said orders, the honorable Judge in Machakos has since clarified that the orders only apply to; specifically listed defendants in the said order, or; specifically listed case numbers in the said order, or; specifically listed vehicle in the said order and that it does not apply to SACCOs where the vehicle, defendant or case number has not been listed.
10. He deposed that after attachment of the accident motor vehicle in the primary suits, the Appellant approached the Respondent's advocate and it was agreed that the vehicle be released upon written consent dated 27/11/2019, that a deposit of kshs 100,000/= would be paid and the balance of the decretal sum in the four files would be liquidated in monthly installments of kshs 100,000/= until payment in full. The written consent is exhibited as DM1.



11. That, it was an agreed term of the consent that the vehicle shall not be sold or transferred until the whole decretal sums are paid and in default of any installment, execution to issue. That, after release of the vehicle, the Appellant defaulted and later sold the vehicle contrary to the terms of the contract. That, he has never paid a cent since 27/11/2019. That, when the advocate tried to attach the vehicle again, a party by the name Daniel Kioko Mumo filed an objection alleging that he was the owner of the vehicle through purchase. A copy of the Application is exhibited as DM2.
12. That, the said third party attached a purported sale agreement dated 29/09/2018 alleging that the vehicle was sold to him for kshs 950,000/= and he paid the full purchase price. The sale agreement is exhibited as DM3. That, the trial court was correct in disregarding the letter from Wamasaa Travellers Ltd purporting to show that the Appellant is a member of the transport SACCO. That, the said letter has been procured fraudulently with the sole purpose of defeating execution for the following reasons;
 - a. The letter has no official stamp for authenticity purposes and is therefore suspect.
 - b. There is no information as to whether he has been paying subscription fees and the blanket nature of the letter is suspicious.
 - c. If the vehicle was sold on 29/09/2018, how could he be a member when the vehicle is not his?
 - d. Assuming he was previously a member, which is not true, the vehicle was successfully sold to another person and there is no way he could be a member.
13. That, the Appellant has been engaging in lies, misinformation and the court should not be swayed by these open lies. That, judgments were delivered on 13/09/2013 and it is mockery of justice that 12 years later, the Respondents are yet to enjoy the fruits of their judgments due to a calculated fraudulent scheme by the Appellant to stifle execution. That, the Appellant has given various proposals of payment which he has not honored. That, warrants of attachment (DM4 a-d) have since been issued and the Appellant should honor them.
14. That, should the court allow the Application, his prayer is that the Appellant be ordered to deposit the entire decretal sum of kshs 1,365, 419/= in court within 30 days and in default, execution to issue.
15. The Application was canvassed through written submissions.

The Applicant's Submissions

16. It was submitted that the main ground for appealing against the trial court decisions is that conventional awards should be given for similar injuries. That, in applications for stay pending appeal from the lower court, the Applicant only needs to show that he has an arguable appeal. Reliance was placed, inter alia, on *Bake 'n' Bite (Nrb) Ltd v Daniel Mutisya Mwalonzi (2015) eKLR* where the court stated;

“This court has pronounced itself in several decisions that under Order 42 Rule 6 (2) of the Civil Procedure Rules, the applicant is seeking orders of stay pending appeal from the subordinate court to the high court, the applicant is not required to prove that they have an arguable appeal, unlike if it was an application before the Court of Appeal seeking stay of execution of decree of the High Court pending appeal to the Court of Appeal...”
17. Reference was made to the conditions for stay of execution under Order 42 Rule 6 of the CPR for the submission that; the Applicant will suffer substantial loss if execution proceeds against him because the decretal sum should be paid by his insurer as per the directions in the Machakos petition. That, the Respondent has not disclosed his financial status hence it is highly unlikely that he will be capable of



refunding the decretal amount if the appeal succeeds. Reliance was placed on *Edward Kamau & Anor v Hannah Mukui Gichuki & Anor* (2015) eKLR where the court stated;

“This court appreciates that the applicants being a party seeking favorable exercise of the courts discretion is under a legal duty to place some material before the court upon which such discretion should be exercised. In other words, they should prove that the respondent is so impecunious that if the decretal sum is paid, then they will not recoup should the appeal succeed, thereby rendering it nugatory...I am in agreement with the applicants that in the absence of an affidavit of means, it may be construed that the respondent is not possessed of sufficient means and therefore not in a position to reimburse decretal money should the appeal succeed..”

18. It was submitted that there has been no delay in filing the Application hence all the conditions in Order 42 Rule 6 of the CPR have been satisfied.

The Respondent's Submissions

19. Reference was made to Order 42 Rule 6 of the CPR for the submission that the Applicant has not provided any security for due performance of the decree as required and he cannot seek a blanket stay. Reliance was placed on *Mks HC Misc Application No 540 of 2019-African Merchant Assurance Co. Ltd Nyamai KEA and Ann Syombua Kioko* where the court stated;

“The general rule is that the Court ought not to deny a successful litigant of the fruits of his judgement save in exceptional circumstances where to decline to do so may well amount to stifling the right of the unsuccessful party to challenge the decision in the higher Court. In *Machira T/A Machira & Co Advocates vs. East African Standard (No 2)* [2002] KLR 63 it was held that: -

“to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court.”

20. It was submitted that the Machakos Petition is not applicable in the cases under consideration for reasons captured in the Replying Affidavit and that it was issued by a court of concurrent jurisdiction thus not binding on this court. That, there is no law which bars a decree holder from executing his or her judgment against the insured.

Reliance was placed inter alia on *Muthuri Ntara & Anor v Francis Mworira Igweta* where the Court (F. Gikonyo J) ruled as follows;

“I reckon that the Respondent is neither a policy holder nor a creditor of BlueShield Insurance Company. He is merely a decree-holder against the Appellants jointly and severally.



Therefore, a moratorium issued to protect the Insurance Company whose fortunes have now dwindled leading to statutory management does not operate as stay of execution of decrees against the insured. A moratorium is declared by the Statutory Manager under Section 67 c (10) of the *Insurance Act* and it protects the insurer against claims by the policyholders and creditors of the insurer. Accordingly, mere declaration of a moratorium does mean an automatic stay of execution against the insured; the insured must prove before the trial court upon lawful grounds that a stay of execution is merited. Courts have had opportunity to consider the effect of a moratorium on third parties' suits and decrees."

21. Further reliance was placed on HCC No 88 of 2012; In the matter of Concord Insurance Company Limited [2014] eKLR where the court stated;

" 47. In this respect, section 67C (10) of the *Insurance Act* provides in part that a declaration of a moratorium by a statutory manager relates to payment by the insurer of its policyholders and other creditors.

48. The appellant in this case was neither a policyholder nor creditor of the insurer as he did not fall within either of the two classes of persons therefore, the moratorium did not apply to him."

22. In conclusion, this court was urged to dismiss the Application with costs or to grant a conditional stay with the entire decretal sum deposited in court within 30 days.

23. I have carefully considered the Application, response and rival submissions, and the issue for determination is whether the Application is merited.

Analysis & Determination

24. The Applicant herein comes standing on the existence of conservatory orders issued in the Machakos Petition on 30/09/2024 in the following terms;

"That pending the hearing and determination of this motion, a conservatory order by way of an injunction, prohibiting the execution of all processes levied in suits against the petitioners members as policy holders of Invesco Assurance Co. Ltd such as listed in the schedule marked 'A' annexed to the supporting affidavit of Onesmus Kyalo Ndambuki herein sworn on 23/9/24 lodged in this petition, being the schedule of claims against the petitioners members policyholder in proceedings wherein the said Invesco Assurance Co. Ltd has expressly assumed liability to defend all the claims and settle the same on behalf of the named petitioners' members' policyholder, and all such arising claims, which liability ought to be fully shouldered by the said Invesco Assurance Co. Ltd pursuant to Article 46 (1)(c) be and is hereby issued.."

25. On 31/10/2024, the court (Noel Adagi J) issued further orders as follows;

"That conservatory orders issued herein on 30/09/2024 and extended thereafter do apply fully to such additional claims of similar nature pending further directions of the court on 19/11/2024."

26. A similar Application to the one before this court was filed in TAWA PMCC No. 220 of 2017 but was dismissed hence the appeal.



27. The Machakos Petition is a class action suit in which several public transport associations have alleged violations of their Constitutional and Consumer rights.
28. The Applicant herein asserts that he is a beneficiary of the conservatory orders by virtue of being a member of the 2nd Petitioner (Wamasaa Travellers Ltd) and has exhibited a letter, dated 25/03/2025, to that effect. I have reproduced the letter below for context;

“25/03/2025

RE: CHRISTONE MUENDO MUMO (ID 12536315) -M/V REG: KBX 321M

This is to confirm that the subject client has been a member of Wamasaa Travellers Sacco since October 2016.

Kindly accord him with the necessary assistance.”

29. On 29/10/2025, the Machakos court made the following clarification;
- i. The conservatory orders issued by this court on 30th September 2024 were only made in favour of the Petitioners and their members having similar claims against the named Insurance Companies subject of this Petition pursuant to Article 258(2)(b), (c), and (d) of *the Constitution* of Kenya and will remain in force pending further orders of the court.
 - ii. There are no conservatory orders in place in this case in favour of the Insurance Companies named in this Petition hence Decree holders in competent Declaratory suits may lawfully execute the decrees in those suits. In addition, fresh suits including declaratory suits may also proceed to be heard and determined on merit notwithstanding this Petition.
30. The Respondent exhibited evidence to show that the subject motor vehicle, KBX 321M, was sold to one Daniel Kioko Mumo on 29/09/2018 at a cost of 950,000/=. He also exhibited evidence to show that that the vehicle was proclaimed on 29/08/2019 but the said Daniel Kioko Mumo filed an application dated 12/09/2019 asserting that he was the owner of the proclaimed vehicle. It is therefore highly contradictory that the same vehicle is being used by the Applicant to claim membership to Wamasaa Travellers Ltd.
31. In my view, the two possible scenarios arising from this contradiction are; firstly, the vehicle was never sold and the sale agreement presented to court was fraudulent. I say this because the settlement agreement (DM1) is dated 27/11/2019 and clause 4 therein was that the vehicle would be released upon payment of the first installment of kshs 100,000/= and that the vehicle would not be transferred until payment in full yet the sale agreement shows that the vehicle had been sold one year earlier on 29/09/2018.
32. If indeed the vehicle had been sold at the time the settlement agreement was made, the new owner would have showed up and would have objected to the attachment. This is further buttressed by an affidavit sworn by the Applicant on 27/03/2024 and filed in the trial court and a logbook attached thereto shows that the motor vehicle was still registered in the Applicant’s name. The fact however is that the Applicant is already a beneficiary of the alleged sale as the vehicle was never attached.
33. The second scenario is that, the letter from Wamasaa Travellers Ltd is fraudulent because the Applicant ‘sold’ the vehicle in 2018 and ceased being the owner and therefore cannot claim membership to



Wamasaa Travellers Ltd using a vehicle that is not his. Owing to the Applicant's conduct in this matter, I am inclined to agree with the trial court's finding that the letter and payment receipts from Wamasaa Travellers Ltd cannot be authenticated. Having 'sold' the motor vehicle in 2018, his membership claim in Wamasaa Travellers Ltd is highly improbable and that means that he is not a beneficiary of the conservatory orders issued in the Machakos Petition.

34. From the foregoing the applicant is seeking an order of stay of execution of the ruling delivered on 02/09/2025 by Hon. J.M Gacheru (SRM) sitting at Tawa in PMCC No. 220 of 2017 pending the hearing and determination of the Appellant's appeal.
35. The only ground for that application is that there is a conservatory order in favour of the insurance company. It is clear that the orders as issued in the Machakos Petition are in relation to the matters that were listed in that petition and not any other matters, and not this one.
36. In the circumstances, the application is not merited and the same is declined.

**DATED SIGNED AND DELIVERED VIRTUALLY (CTS) THIS 27TH MARCH 2026 MUMBUA
T MATHEKA**

JUDGE.

SIGNED BY/FOR:

LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA

LADY JUSTICE MATHEKA, TERESIA MUMBUA

