Kifedha Limited v Kimani (Civil Appeal E280 of 2025)
[2026] KEHC 5832 (KLR) (20 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5832 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL E280 OF 2025

FN MUCHEMI, J

APRIL 20, 2026

BETWEEN

KIFEDHA LIMITED ..... APPLICANT

AND

SALOME WAITHIRA KIMANI ..... RESPONDENT

RULING

1. The application for determination dated 12th November 2025 seeks for orders of an injunction restraining the respondent, her servants, agents or assigns from removing, transferring, selling or in any way interfering with the applicant's possession, custody or control of motor vehicle registration number KDG 186R pending the hearing and determination of the appeal.

2. In opposition to the application, the respondent filed Replying Affidavits dated 22nd December 2025.

The Applicant's case

3. The applicant states that judgment in Ruiru Small Claims Court Case No. SCCC E345 of 2024 was delivered on 8th October 2025. The Honourable Court erroneously ordered for the release of motor vehicle registration number KDG 186R before the full determination of the trial suit and thereafter through her judgment acknowledged that the respondent was to make further payments of Kshs. 12,400/- to them and Kshs. 62,238/- to the Auctioneers prior to getting the subject motor vehicle released to her thereby issuing conflicting and unenforceable orders. The applicant argues that the said motor vehicle forms part of its secured collateral pending full repayment of the loan advanced to the respondent and it stands to suffer irreparable loss if the same is released or disposed of before the appeal is heard and determined.

4. The applicant avers that it has filed this appeal challenging the judgment of the court below which raises substantial questions of law and fact including errors in computation of loan balances, disregard of documentary evidence and contradictions in the lower court's findings. The applicant states that

unless the court intervenes, the respondent may remove, conceal or dispose of the said vehicle thereby rendering the appeal nugatory and occasioning irreparable loss to it.

The Respondent's Case

5. The respondent states that the application and appeal are res judicata. The respondent states that she instituted the claim in the lower court regarding the mode and conduct of the respondents in acquiring and repossessing motor vehicle registration number KDG 186R. The respondents had repossessed the said motor vehicle on allegations of arrears owed to the 1st respondent which the court termed as irregular, inflated and could not match up with their books of accounts. The trial court set aside the stay of execution by the 2nd respondent, Mikael Auctioneers and ordered the release of the suit motor vehicle which was repossessed illegally. Aggrieved by the said ruling dated 31st July 2024, the applicant has then appealed vide Civil Appeal No. E198 of 2024 which was dismissed on 22nd November 2024. The matter proceeded in the lower court and the court rendered its judgment on 8th October 2025. The trial magistrate concluded that the respondent owed the applicant a sum of Kshs. 12,400/- which she has been willing to pay.

6. The respondent further states that the applicant seeks to adjudicate prayers on behalf of a party who is not a party to the instant suit being Mikael Auctioneer and the same should not be entertained. The respondent argues that she has had the suit motor vehicle for more than a year and has never disposed of the same.

7. The respondent states that the onus of proof was in the hands of the applicant and it failed to do so and rushing back to court seeking orders on documentary evidence which it ought to have availed in the lower court. The respondent avers that the applicant is not entitled to the orders sought as they have already been determined and dismissed, therefore are res judicata.

8. Parties disposed off the application by way of written submissions.

The Applicant's Submissions

9. The applicant relies on Section 7 of the *Civil Procedure Act* and the cases of Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR and Okiya Omtatah v Communications Authority of Kenya & 14 Others (2015) eKLR and John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport & Infrastructure & 3 Others [2021] eKLR and submits that the application in HCCA No. E198/2024 arose from an interlocutory ruling dated 31st July 2024 concerning interim release of the suit motor vehicle but the present application and appeal arise from the final judgment of the lower court delivered on 8th October 2025 which introduced new determinations namely that the respondent owed the applicant Kshs. 12,400/-; directions on payment to auctioneers and conflicting orders regarding release of the motor vehicle. The applicant argues that the said issues were neither in existence or capable of determination at the time this court made its ruling in November 2024. Thus the present application and appeal cannot be res judicata.

10. The applicant relies on the cases of Butt v Rent Restriction Tribunal [1982] KLR 417 and Reliance Bank Ltd v Norlake Investments Ltd [2002[1 EA 227 and submits that it has demonstrated that the appeal raises arguable issues including contradictions in the lower court's orders and errors in appreciation of documentary evidence; that the subject motor vehicle is jointly registered as security for an outstanding loan and release or disposal of the vehicle would irreversibly defeat its proprietary and security interest.

11. Relying on the case of Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR, the applicant submits that if the motor vehicle is released and its joint ownership deregistered at NTSA, any

success on appeal will be purely academic as the security will have been irretrievably lost. The applicant refers to the decision in National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another [2006] eKLR and submits that monetary compensation is not an adequate remedy in circumstances where secured collateral is disposed of.

The Respondent's Submissions

12. The respondent relies on the case of IEBC v Maina Kiai & 5 Others (2017) eKLR and submits that the present application is res judicata as the subject matter is the repossession, ownership and release of the suit motor vehicle which has been conclusively been litigated and determined in SCC/E3456 in the Small Claims Court and HCCA/E198/2024 where the instant court dismissed the appeal terming it premature. The respondent submits that the issues are the same, the parties are similar save that the 2nd applicant has opted not to pursue the current matter.

13. The respondent submits that the applicant failed to discharge the onus of proof and the trial court found that the arrears were irregular, inflated and unsupported by proper books of accounts. The trial court pronounced that the applicant was to be paid a sum of Kshs. 12,400/- which she has expressed the need to pay to put the matter to rest. Further the applicant has ample opportunity to present documentary evidence before the trial court but failed to do so. Thus it cannot now seek to introduce the same through the back door.

14. The respondent refers to the case of Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55 and submits that courts cannot grant relief to or against non parties as the applicant seeks orders on behalf of Mikael Auctioneers, who are not parties to the present proceedings.

15. The respondent submits that she has held possession of the suit motor vehicle which is registered in both parties names and she has never expressed a need to sell the said vehicle as it is her source of livelihood and transport. The respondent argues that the present application is not motivated by fear of prejudice but a deliberate attempt to frustrate her from reclaiming the log book in her name and de-registering her as the co-owner of the vehicle. Relying on the case of Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd [2009] eKLR, the respondent submits that the present application is an abuse of the court process. Further, the applicant submits that the court ought to uphold the judgment of the lower court as the learned adjudicator scrutinized the evidence before making any findings and her findings were deeply anchored in law.

The Law

Whether the application and appeal are res judicata.

16. The doctrine of res judicata is anchored in Section 7 of the *Civil Procedure Act*. It provides:-

    No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which issue has been subsequently raised, and has been heard and finally decided by such court.

17. The Court of Appeal in The Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR held:-

    For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

a. The suit or issue was directly and substantially in issue in the former suit.

b. That the former suit was between the same parties or parties under whom they or any of them claim.

c. Those parties were litigating under the same title.

d. The issue was heard and finally determined in the former suit.

e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

18. From the foregoing, it is clear that for res judicata to suffice, a court should look at all the four corners set out above namely; the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suits; the former suit must have been between the same parties or parties under whom they claim; the parties must have litigated under the same title; the court which decided the former suit must have been competent and the former suit must have been heard and finally decided by the court in the former suit.

19. The application in HCCA No. E198 of 2024 sought stay of execution in respect of the ruling in Ruiru Small Claims Court SCCCOMM E345 of 2024 delivered on 31st July 2024 and stay of proceedings pending the hearing and determination of the appeal. The subject of the appeal was the decision by the lower court rendered on 31st July 2024 which ordered the release of motor vehicle registration number KDG 186R repossessed on 10th July 2024 to be released to the respondent herein. The instant application seeks for orders of an injunction pending appeal restraining the respondent from selling or transferring the said motor vehicle following the decision by the lower court on 8th October 2025. The subject of appeal in the current suit is the final judgment of the court dated 8th October 2025 which ordered for the release of the suit motor vehicle to the respondent upon payment of Kshs. 12,400/- as loan arrears to the applicant herein and Kshs. 62,238/- to Mikael Auctioneers as storage and auctioneering fees. It is therefore evident that the subject matter of the two appeals is different and the applications also seek different orders although the parties are similar save that the auctioneers are not in the present suit. Accordingly, the application and appeal are not res judicata.

Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction

20. Order 42 Rule 6(6) of the Civil Procedure Rules 2010 empowers this court to grant a temporary injunction on terms it deems fit so long as the procedure for filing an appeal from the subordinate court has been complied with. It provides thus:-

Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellant jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from subordinate court or tribunal has been complied with.

21. In the instant case, the ruling of the trial court was delivered on 8th October 2025 whilst the Memorandum of Appeal was filed on 22nd October 2025. To that end, the applicant duly complied with the procedure for instituting an appeal before this court and thus the court has jurisdiction to entertain the present application.

22. The principles for granting of a temporary injunction pending appeal are now well settled. Those principles were set out by Visram J (as he then was) in Patricia Njeri & 3 Others v National Museum of Kenya [2004] eKLR where the learned Judge stated:-

> " The appellants did however, pray (in the alternative) for an order of injunction pending appeal. There was no dispute that the court can, in a proper case grant an injunction pending appeal. What are the principles that guide the court in dealing with such an application.
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> In Venture Capital & Credit ltd v Consolidated Bank of Kenya Ltd Civil Application No. Nairobi 349 of 2003 (UR) the Court of Appeal said that an order for injunction pending appeal is a discretionary matter. The discretion must, however, be exercised judicially and note in a whimsical or arbitrary fashion. This discretion is guided by certain principles some of which are as follows:-
>
> The discretion will be exercised against an applicant whose appeal is frivolous. (Madhuaper International Limited v Kerr [1985] KLR 840 which cited Venture Capital). The applicant must state that a reasonable argument can be put forward in support of his appeal.
>
> The discretion should be refused where it would inflict greater hardship that it would avoid. (Madhupaper supra).
>
> The applicant must show that to refuse the injunction would render his appeal nugatory (Butt v Rent Restriction Tribunal [1982] 417).
>
> The court should also be guided by the principles in Giella v Cassman Brown & Co. Ltd [1973] EA 358.

23. The principles in Giella v Cassman Brown & Co. Ltd [1973]EA 358 were restated by Ringera J, (as he then was) in Airland Tours & Travel Limited v National Industrial Credit Bank Nairobi (Milimani) HCCC No. 1234 of 2002 as follows:-

a. A prima facie case with a probability of success at trial;

b. The applicant is likely to suffer an injury, which cannot be adequately compensated in damages;

c. If the court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;

d. The conduct of the applicant meets the approval of the court of equity.

A prima facie case with a probability of success at trial

24. What then constitutes a prima facie case? In the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125,

In civil cases a prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently being infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly, a standard, which is higher than an arguable case.

25. Similarly, in Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR the court stated:-

> " The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion....The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the appellant's case is more likely than not to ultimately succeed."

PARA 26.

The determination of whether the applicant has a prima facie case with chances of success in the instant application calls for a consideration of whether the applicant has an arguable appeal.

PARA 27.

Concerning what comprises an arguable appeal, the Court of Appeal stated in Stanley Kang'ethe Kinyanjui v Tony Keter & 5 Others [2013] eKLR that:-

The first issue for our consideration is whether the intended appeal is arguable. This court has often stated that an arguable ground of appeal is not one which must succeed but it should be one which is not frivolous, a single arguable ground of appeal would suffice to meet the threshold that an intended appeal is arguable.

PARA 28.

Similarly, in Dennis Mogambi Mong'are v Attorney General & 3 Others Civil Appeal No. Nairobi 265 of 2011 (UR 175/2011) where the same court stated that:-

> " An arguable appeal is not one that must necessarily succeed, it is simply one that is deserving of the court's consideration."

PARA 29.

I have perused the Memorandum of Appeal and noted that the grounds raised touch on matters of fact which is contrary to Section 38 of the *Small Claims Court Act*. Without delving into the merits of the appeal, it is my considered view that the grounds of appeal fail to demonstrate that the applicant has an arguable appeal or a prima facie case with probability of success.

Irreparable Injury

30. In Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others [2016]eKLR the court considered Halsbury's Laws of England on what irreparable loss is and stated that:-

> " First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages."

31. The issue is whether the applicant has demonstrated that he will suffer irreparable loss unless the injunction is granted, which loss would not adequately be compensated by an award of damage. The applicant argues that should the applicant release or dispose off the security, it shall loose its proprietary

and security interest which cannot be compensated by way of damages. It is noted that the suit motor vehicle is registered in the names of both parties herein. It is therefore, unlikely that the respondent can dispose of the suit motor vehicle without the input or consent of the applicant. Accordingly, the applicant has not shown that he shall suffer irreparably or how the appeal would be rendered nugatory if a temporary injunction is denied. Furthermore, should any loss be occasioned by the fault of the respondent, the loss incurred can be redeemed by way of damages.

Balance of Convenience Test

32. In the case of Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR, the court in dealing with the issue on balance of convenience held as follows:-

> The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the inunction will be greater than which is likely to arise from granting it.

33. Bearing in mind the holding in the above decision, it is my considered view that the balance of convenience tilts in favour of the respondent because the inconvenience caused to her will be much greater than that caused to the applicant.

34. Accordingly, it is my considered view that the application dated 12th November 2025 lacks merit is hereby dismissed with costs.

35. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 20TH DAY OF APRIL 2026.

F. MUCHEMI

JUDGE