

REPUBLIC OF KENYA

IN THE HIGH COURT OF AT ELDORET

CIVIL APPEAL NO. E264 OF 2025

COAST BUS (MOMBASA) LIMITED.....
APPELLANT

VERSUS

PETER MASIKA MAKOKHA.....
RESPONDENT

(Being an Appeal from the Judgment and Order of the Small Claims Court at Eldoret dated and delivered on the 4th September 2025 by Hon. Lemayan R. Robert in Eldoret Small Claims Suit No. E820 of 2024)

BETWEEN

PETER MASIKA MAKOKHA.....
CLAIMANT

VERSUS

COAST BUS (MOMBASA) LIMITED
RESPONDENT

Coram: Before Justice R. Nyakundi

M/S A.L.A & Co. Advocates

RULING

1. Before this Court is a Notice of Motion expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B, 3A & 63(e) of the Civil Procedure Act and all enabling provisions of the law, and dated on 28th day of October 2025 seeking the following orders:
 - a. *Spent.*

- b. That pending the inter partes hearing of this application, this honorable Court be pleased to issue an interim stay of execution proceedings, more specifically the proclamation notice dated 15th October 2025 following the judgment delivered on 4th September 2025 in Eldoret SCCC No. E820 of 2024.*
- c. That pending the inter partes hearing of this application, this honorable Court be pleased to issue an interim stay of execution of the judgment and/or decree following the judgment delivered on 4th September 2025 2025 in Eldoret SCCC No. E820 of 2024; Peter Masika Makokha vs Coast Bus (Mombasa) Limited.*
- d. That pending the hearing and determination of the Appeal this Honourable Court be pleased to order a stay of execution of the decree following the Judgment delivered on 4th September 2025 in Eldoret SCCC No. E820 of 2024: Peter Masika Makokha vs Coast Bus(Mombasa) Limited.*
- e. That the costs of this application be in the cause.*

2. This application is based on the following grounds:

- a. Vide a Judgment delivered on 4th September 2025 the Trial Court delivered a judgment wherein it found the Appellant 100% liable for the suit accident and the consequential injuries on the Respondent.*
- b. At the time of delivery of the Judgment the Court issued a 30 days stay of execution, which have since lapsed after which the Respondent/Judgment Creditor is at liberty to commence execution against the Appellant.*
- c. On 15th October 2025, the Respondent/Judgment Creditor instructed Auctioneers, Messrs. Razor Sharp Auctioneers, who have since proclaimed the goods of the Appellant.*
- d. There is currently no stay of execution pending this appeal and as such the Appellant is at the risk of execution despite having filed an appeal to the trial Court's decision.*

- e. *Being aggrieved with the Judgment of the trial Court delivered on 14th September 2025, the Appellant has filed the instant appeal challenging the whole of the said ruling therein seeking the setting aside of the lower Court judgment.*
- f. *The Respondent/Judgment Creditor has already commenced the process of execution where they have instructed auctioneers who have proclaimed the appellant's movable goods.*
- g. *Should the Respondent and its agents proceed with execution, the Appellant shall be at the risks of occasioning irreparable prejudice as follows:*
 - i. *Both this application and appeal, which dispute the whole of the Judgment dated 4th September 2025 shall be rendered nugatory and a mere academic exercise as its substance will have been lost.*
 - ii. *The Appellant risks their instant application and appeal being dispensed with summarily before consideration on merit*
 - iii. *The Appellants have an arguable case with high likelihood of success which shall be overtaken by events if the stay of execution pending appeal is not issued.*
 - iv. *The Respondent's/Judgment Creditor's financial position is unknown and as such he might not be able to retribute the Appellant if the execution were allowed to proceed.*
 - v. *The Appellant is well and willing to deposit security for the appeal in Court pending the determination of the appeal.*
- h. *The Appellants are capable of honoring the award that the High Court may ultimately find to be binding upon them and therefore there is no undue prejudice which stands to be suffered by the Respondent/Judgment Creditor which cannot be compensated by an award of costs and interests upon conclusion of the Appeal.*

- i. *The Appellants are ready and willing to deposit security for appeal either in Court or in an interest earning account pending the hearing and determination of the appeal.*
 - j. *This Honourable Court has the discretion, in exercise of its appellate jurisdiction to stay the execution of the Judgment dated 4th September 2025 pending the determination of the instant appeal.*
 - k. *It is therefore in the interest of justice that the Notice of Motion Application dated 28th October 2025 and filed herewith be certified as urgent and the Honourable Court be pleased to grant the orders sought herein.*
 - l. *This Court has the power, in exercise of its jurisdiction to stay the execution of the order/decreed and judgment dated 4th September 2025 issued by this Court, to preserve the subject matter of the appeal.*
 - m. *The Applicant has filed this Application timeously.*
 - n. *Such and/or further grounds to be adduced at the hearing.*
- 3.** In support of the application is the supporting affidavit sworn by the Applicant dated 28th day of October 2025 whose averments echo the grounds of the application.

Decision

- 4.** The withdrawal of suits in Kenya are primarily governed by Order 25 of the Civil Procedure Rules 2010, which allows a Plaintiff to withdraw or discontinue a suit before the hearing. Once a withdrawal has been properly filed, the Court generally lacks jurisdiction to reinstate it.
- 5.** The legal principles on withdrawal of suits or criminal cases has been captured as hereunder:
 - ***Withdrawal by Plaintiff (Civil):*** *Under Order 25, Rule 1, a Plaintiff can voluntarily withdraw a suit or part of a claim before the hearing begins by serving a written notice to all parties.*

- **Withdrawal Consequences:** *Once a case is withdrawn under Order 25, the Plaintiff is generally prohibited from filing a new suit for the same cause of action, unless the Court grants permission to do so.*
 - **Reinstatement Limitation:** *The Court has no jurisdiction to reverse a voluntary withdrawal of a suit by the Plaintiff.*
 - **Withdrawal of Criminal Cases:** *Under Section 87 of the Criminal Procedure Code (Cap 75), a complainant can withdraw a complaint. If the Court allows it, the accused person is acquitted.*
 - **Withdrawal of Criminal Prosecution:** *Public prosecutors can withdraw cases, which often leads to the acquittal or discharge of the accused.*
6. I have reviewed the record and there is merit to grant the application for withdrawal of suit with no orders as to costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH MAY 2026.

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R. NYAKUNDI
JUDGE