

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CIVIL APPEAL NO. E015 OF 2025**

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

**SECONDARY**

**VERSUS**

**DAVID  
NDIEMA.....RESPONDENT**

**Coram: Before Justice R. Nyakundi**

**M/S Katama Ngeywa & Co. Advocates**

**M/S Morgan Omusundi Law Firm**

**RULING**

1. Before this Court is a Notice of Motion dated 19<sup>th</sup> March 2026, brought under Section 3A, Civil Procedure Act, Order 42 Rule 6 & all enabling provisions of law and procedure where the Applicant is seeking for the following orders:
  - a. *Spent.*
  - b. *That pending the inter partes hearing of this application, there be an order of stay of execution of the Decree in Eldoret Small Claims Court Claim Number E508 of 2024; David Ndiema Versus Board of Governors Matumbei Secondary School, the Warrants of Attachment issued by the said Court on 23<sup>rd</sup> January 2026 against the Applicant/Appellant be suspended and 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 motor vehicle KCH 709Q, Isuzu School Bus, to the Applicant, unconditionally.*



*h) 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.*

3. In support of the application is the affidavit sworn by Emman Mukabi who deponed as follows:

- a. That I am an adult of sound mind competent to take oath in the Applicant herein.*
- b. THAT Judgment in the Small Claims Court suit was delivered on 5<sup>th</sup> September 2025 and the appellant aggrieved by the said judgement filed this appeal.*
- c. THAT in the meantime the Small Claims Court issued a Warrant of Attachment against the Appellant on 23<sup>rd</sup> January 2026.*
- d. THAT the said Warrants of Attachment were served upon the Applicant on 3<sup>rd</sup> February 2026.*
- e. THAT on 4<sup>th</sup> February 2026, the Notification of Sale of Moveable Property dated 4<sup>th</sup> February 2026 and the Invoice/fee Note/Bill of Costs dated 4<sup>th</sup> February 2026 was served upon the Applicant by Top Leaf Auctioneers;*
- f. THAT upon service of the above documents by Top Leaf Auctioneers, Motor vehicle KCH 709Q, School Bus, was proclaimed/impounded at 10.00 am on 4<sup>th</sup> February 2026 while the Motor Vehicle was in Kitale town for Inspection and fitting of a new speed governor, which was held at Super Truck Enterprises at Kibomet within Kitale Municipality.*
- g. THAT the appellant moved the trial Court for a review fits orders inter alia on the ground that the Court lacked jurisdiction to determine the claim brought before it and to order the*

*attachment and sale of the Appellant's property, but the Court dismissed the Application in its Ruling delivered on 19<sup>th</sup> March 2026*

- h. THAT the seizure of Motor Vehicle on 4<sup>th</sup> February 2026 was unprocedural, the proclamation was made on 3<sup>rd</sup> February 2026.*
  - i. School Games and Sports in which the students of the Applicant school are active participants are on and the children require the school bus for these activities.*
  - j. THAT in Notification and Schedule of sale the Auctioneers valued the School bus purchased out of public funds at a paltry Ksh 700,000/= when the most recent valuation valued the Motor Vehicle at Ksh 3,200,000/= as at 29<sup>th</sup> August 2025.*
  - k. THAT the trial Court lacked jurisdiction to hear and determine the suit, therefore, the judgment and all consequential orders were made without jurisdiction; copies of the Decree and Judgement appealed from, and Warrant of Attachment are annexed and marked EM-4, EM-5 and EM-6.*
  - l. THAT finally the Applicant being a public school, attachment of its property were not to be made in the manner in which the Decree holder attempted to do.*
  - m. THAT in the circumstances it is only judiciously fair and in the interest of justice that the execution of the Decree herein be stayed pending the outcome this appeal as the school shall suffer substantial loss.*
4. In response to the application is a replying affidavit sworn by David Ndiema who deposed as follows:
- 1. That I am the Respondent herein and hence duly authorized and competent to make and swear this affidavit.*
  - 2. That I have read the Applicant application dated 19<sup>th</sup> March 2026, the same has also explained to me by my advocates on record M/s Morgan Omusundi Law Firm Advocates which Counsel I verify believe to be*

true and further that I have understood and familiarized myself with the imports therein and with to respond as follows:

3. **THAT I** am informed by my Advocates on record which advice I take to be accurate that the present application brought by the Applicant against me is a nonstarter, lacks merit, frivolous, vexatious, bad in law, fatally defective, incompetent, abuse of due process of Court thus incapable of obtaining the orders sought and ought to fail.
4. **THAT** judgment in the Small Claims Court was delivered on **5" September 2025** in favour of the Respondent herein, and a decree was duly issued.
5. **THAT** I am informed by my Advocates on record which advice I take to be accurate that despite service of the **Notice of Entry of Judgment**, the Applicant has failed, neglected, and/or refused to satisfy the decretal sum to date.
6. **THAT** in execution of the lawful decree I through my advocates on record instructed Top Leaf Auctioneers, who proceeded to attach the Applicant's motor vehicle in strict compliance with the law.
7. THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that upon attachment, the Applicant filed an application before the Small Claims Court dated 19-2- 2026 seeking, inter alia, stay of execution and setting aside of the notification of sale, which application was heard and struck out with costs vide a ruling delivered on 19" March 2026.
8. THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the Applicant has now filed the instant appeal against the ruling of 19" March 2026 and seeks stay of execution yet no stay orders have ever been granted by any Court.
9. THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the mere filing of an appeal does not operate as a stay of execution and the Applicant is fully aware of this legal

position.

10. *THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the Applicant has not demonstrated any substantial loss they stand to suffer if the orders sought are not granted.*
11. *THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the allegation that the vehicle cannot be attached under **Section 21 of the Government Proceedings Act** is a legal misdirection and even if it were a public school, the bus is a moveable asset subject to execution to satisfy a lawful debt.*
12. *THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the Applicant has deliberately misapplied the law in an attempt to mislead this Honourable Court.*
13. *THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the valuation report annexed by the Applicant is self-serving, biased, and procured solely for purposes of this application.*
14. *THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the auctioneer conducted a lawful valuation based on prevailing market conditions and in accordance with the Auctioneers Rules.*
15. *THAT I am verily advised by my advocate whose advice I believe to be of sound and logic that the Applicant has not demonstrated willingness or ability to satisfy the decretal sum nor offered any security as required by law.*
16. ***THAT I*** *am verily advised by my advocate whose advice I believe to be of sound and logic that at the time of filing the claim and at the time of delivery of Judgment, the Small Claims Court was properly established under the Small Claims Court Act and was exercising jurisdiction as conferred by statute.*
17. ***THAT I*** *am verily advised by my advocate whose advice I believe to be of sound and logic that the Judgment delivered in **Gathaiya v***

**Attorney General 2 others 176 Interested Parties (Petition E008 & E010 of 2024 (Consolidated)) 2026 KEHC 290(KLR) (22 January 2026) (Judgment)** did not expressly declare prior judgments delivered by the Small Claims Court null and void.

18. **THAT I** am verily advised by my advocate whose advice I believe to be of sound and logic that the said decision did not state that it would operate retrospectively so as to invalidate concluded matters in which judgments had already been delivered.
19. **THAT I** am verily advised by my advocate whose advice I believe to be of sound and logic that it is a settled principle of law that judicial decisions, unless expressly stated otherwise, operate prospectively and not retrospectively.
20. **THAT I** am verily advised by my advocate whose advice I believe to be of sound and logic that at the time this Court heard and determined this matter, there was no declaration by any superior Court divesting it of jurisdiction to hear road traffic accident claims.
21. **THAT I** am verily advised by my advocate whose advice I believe to be of sound and logic that jurisdiction of a Court is determined at the time of filing and hearing of the matter and based on the law as it stands at that time.
22. **THAT I** am verily advised by my advocate whose advice I believe to be of sound and logic that to purport to invalidate judgments lawfully delivered prior to January 2026 would occasion grave injustice and legal uncertainty.
23. **THAT I** am verily advised by my advocate whose advice I believe to be of sound and logic that allowing the present application would open the floodgates and adversely affect countless claimants who lawfully obtained judgments before the Small Claims Court prior to the decision in Petition No. 8 of 2024.
24. **THAT I** am advised by my advocates on record, which advice I believe

*to be true that therefore, the process of execution of the decree was duly adhered to and any assertions to the contrary are just but unfounded allegations which cannot be proven by the Applicant. The Applicant was duly notified of the entry of judgment and the imminent execution as it has acknowledged under paragraph G of the grounds supporting the application but they willingly chose indolence and indifference over substantive action to either object to the notice or admit the judgment debt.*

25. **THAT** *the instant Application is in my firm belief devoid of merits in that the Applicant has not seriously demonstrated on the face of the application, as legally required, that there is any just cause to warrant stay of execution of the Court's judgment.*

26. **THAT I** *am informed by my advocates on record which information I verily believe to be true that the Applicant has not demonstrated what substantial and/or irreparable loss or damage that he stands to suffer since execution of decree is a rightful legal process and does not in itself amount to prejudice upon the judgment debtor.*

27. **THAT I** *am informed by my advocates on record which information I verily believe to be true that prayers seeking for stay of execution are equitable discretionary reliefs and that it is not designed to assist a person who has deliberately sought to obstruct or delay the course of justice.*

28. **THAT** *I firmly believe that the orders sought are only aimed at aiding the Applicant's selfish and personal interest as opposed to the interest of justice and fairness and have been tainted with malice.*

29. **THAT** *I swear this affidavit in strong opposition of the application now before this Honourable Court and pray that the same be dismissed with costs in its entirety to me because jurisdiction is everything and a*

*Court that finds it lacks jurisdiction must down its tools.*

5. This application was heard and canvassed by way of written submissions raising the salient features of the facts of the dispute and the applicable legal principles. The learned Counsel for the Applicant weighed on the interlocking issues at this interlocutory stage in which he invited this Court to find that the decree in Eldoret Small Claims Court Claim Number E508 of 2024 between David Ndiema versus Board of Governors Matumbei Secondary School is voidable for want of jurisdiction of the trial Court. It was learned Counsel's submission and contention that the seizure of motor vehicle registration KCH 709Q proclaimed and impounded on 4<sup>th</sup> February 2026 by the Auctioneer was carried out in violation of Section 21 of the Government Proceedings Act. Learned Counsel went further to urge this Court that going by the dicta of the High Court Petition E008 and E010 of 2024 delivered on 22<sup>nd</sup> January 2026 found and held that the Small Claims Court did not have jurisdiction to hear and determine claims arising from Road Traffic Accidents. In support of this point of law on the trial Court lacking jurisdiction, Learned Counsel placed reliance on the following case laws:

*Guthaiya v Attorney General & 2 Others & 176 Interested Parties (Petition E008 & E010 of 2024 (Consolidated) [2026] KEHC 290 (KLR), Kioko & 6 Others v Ojwang & 17 Others (Civil Appeal 78 of 2019 [2024] KECA 1424 (KLR), Rwimbo v Gachagua (Civil Appeal 7 of 2018) [2025] KEHC 5130 (KLR), Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] KLR & Muiruri v Mkalama (Civil Appeal E119 of 2024) [2025] KEHC 10689 (KLR)*

6. In a nutshell learned Counsel relying on the above principles as settled law on matters of jurisdiction exercisable by the Small Claims Court invited this Court to make a finding that the judgment of the trial Court is null and void and incapable of being enforced as a decree of the Court.

7. The Respondent Counsel on the other hand filed submissions dated 1<sup>st</sup> April 2026 in which he contended that the notice of motion on stay of execution can only be granted in favour of the Applicant if he satisfies the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules. That the application by the Applicant before this Court can better be described as an afterthought and a tactic to derail the enforcement of a lawful decree. Learned Counsel raised five-point guidelines which the Applicant's submissions have not been able to address rendering his application moot. These legal perspectives include that the Applicant has failed to satisfy a lawful decree. Secondly, he has filed an application devoid of merit. Thirdly, he has failed to demonstrate substantial loss. Fourth, that he has failed to have a security and finally he has caused unnecessary delay and expense. The following case laws were cited by the learned Counsel in support of his rejoinder to challenge any orders of stay being granted to the Applicant: (*See Victory Construction vs BM (a minor suing through next friend one PMM) [2019] eKLR and Cecilia Karuru Ngavu v Barclays Bank of Kenya & Another [2016] eKLR*).
8. In conclusion learned Counsel submitted that the Applicant's application lacks merit and the same be dismissed.
9. The substratum of this application by the Applicant is based on jurisdiction by the Small Claims Court as it was then exercisable but subsequently in a Petition of the High Court Referenced as E008 and E010 of 2024 between **Gathaiya v Attorney General & 2 Others & 176 Interested Parties**, one of the declarations made by the Court is that of its competence to entertain and determine matters arising from Road Traffic Accident claims. The Respondent in a rejoinder could not hear of it, he stayed in the earlier statutory scheme in which the Courts had been allowed to hear disputes under the tort of negligence specifically arising from Road Traffic Accidents.

## **The Decision**

10. The question therefore is whether the Respondent can proceed to execute and enforce the decree arising out of that judgment in which the Court has been faulted on the issue of jurisdiction.
11. The issue of jurisdiction in our legal system is now well settled and there is no debate about it. This is affirmed by the decisions from the Superior Courts in the following cases:

*In Kioko & 6 Others v Ojwang & 17 Others (Civil Appeal 78 of 2019 [2024] KECA 1424 (KLR) the Court held that; “It has constantly been stated that jurisdiction is a threshold issued that goes to the competence of the Court to hear and determine a suit. Jurisdiction can be raised at any stage of the proceedings in Court, by any of the parties, or by the Court, and once raised the Court would do well to examine it and render a considered ruling on it. Jurisdiction, a mantra in adjudication, connotes the authority or power of a Court to determine a dispute submitted to it by contending parties in any proceedings. Where a Court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity injected into it, will be marooned in the intractable web of nullity. Similarly, in Rwimbo v Gachagua (Civil Appeal 7 of 2018) [2025] KEHC 5130 (KLR) the Court held that; “It is trite law that jurisdiction is at the core of exercise of power by a Court, where there is no jurisdiction the Court cannot exercise power without violating the principles of rule of the law and legality. The Court of Appeal in Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989] eKLR, stated; “Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its*

*tools in continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” Lastly in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR the Court held: “A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction the Court cannot entertain any proceedings.”*

12. The doctrine of jurisdiction dictates that a Court must possess the authority to hear and decide a case, without it a Court cannot proceed and its actions are considered null and void. Jurisdiction is primarily conferred by the Constitution or the Statute not by the Court itself. If the Court has no jurisdiction to determine the dispute, it must cease all proceedings immediately. It is not lost of this Court that Parliament in its wisdom was desirous that Road Traffic Accident claims be heard and determined by the Small Claims Court but they forgot that there is a corresponding Statute Cap 405 Insurance (Motor Vehicle Third Party Risks) Act. The provisions in Cap 405 of the Laws of Kenya are in direct contrast both in procedural and substantive law with the Small Claims Act. That was the letter and the spirit among other considerations which led to the Court in Petition No. E008 & E010 of 2024 to oust the jurisdiction of the Small Claims Court from hearing and determining the Road Traffic Accident claims.

13. It does not matter whether the Applicant has raised the judicial discretion post judgment. My take is, a question of jurisdiction of a Court may be raised while an action is pending or it may be raised after the action has been disposed of and a judgment has been rendered. Essentially in law, jurisdiction may be found in the law of direct attack and in the law of collateral attack. The reason for this is in the field of so called collateral attack that after a judgment has been rendered its validity as a judgment depends upon whether or not it was rendered by a Court acting as a Court at the time of its rendition. In truth, the Small Claims Court on matters of the tort of negligence focusing on Road Traffic Accidents has no competence, capacity or the drivers in the administration of justice in these kind of disputes to deliver on issues involved in the complexity of the law itself. There is a question of procedural law of notifying the various actors or other third parties who may have been involved in the causation of the accidents so that liability can be apportioned appropriately. There is also the fundamental question that there are criminal proceedings under the Traffic Act which are required by law to be investigated and action taken by the Office of the Director of Public Prosecution to prefer criminal charges against the culprits. These traffic offences have a direct correlation to the civil claims which may be microwaved within sixty days' timeline upon which the Small Claims Court is mandated by law to hear and determine the claim with finality. There are two major classifications on jurisdiction. The first is the jurisdiction of the person as constituted under Article 50(1) of the Constitution on the jurisdiction of the subject matter as outlined by the Legislature.
14. It is undoubtedly true that originally the claim on personal injuries in which the Claimant maybe expected to seek compensation under award of damages below one million were domiciled before the Small Claims Court but the High Court in delving into the application of both procedural and substantive law found that by the very nature of composition the Adjudicators have no competence both in the *res* and *personam* to do

justice to such claims. There is nothing in the Road Traffic Claims to fit into the preamble of the Act whose objective is to achieve *easy of doing business* among the citizens of Kenya particularly at the Ward, Sub County and in other situations at the County levels. The meaning of jurisdiction as the scope of a Court's power is encompassed within the term jurisdiction, goes just beyond the *personam* and matters jurisdiction. The Small Claims Court jurisdiction on Road Traffic Accidents has been at stake for a long time since the promulgation of the Act by Parliament. The Court's Adjudicators' hands were tied following the signing of the Bill into law and the inner and outer boundaries of personal injury claims found themselves within that adjudicatory jurisdiction.

15. The Respondent in the instant application is hanging on to the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules and the principles in Cecilia Karuru Ngayu (Supra) and Victory Construction to oppose grant of orders of stay on the basis that there is already a judgment of the Court followed with a decree to be executed against the Judgment Debtor without bearing in mind that as of now the forums styled and recognized as Small Claims Courts have no jurisdiction to entertain execution and enforcement of a decree from a judgment rendered with no jurisdiction. This bloodline on jurisdiction of a Small Claims Court dried up the moment the Superior Court in Petition No. E008 and E010 of 2024 was delivered by the Court.
16. For those reasons, a judgment rendered without jurisdiction is null and void *ab initio* meaning it has no legal effect, cannot be sanitized and is subject to collateral attack at any time which the Applicants to this motion have done. As a consequence of this, all other actions taken by the Judgment Creditor as against the Judgment Debtor have no force of the law. The Court takes judicial notice that the motor vehicle KCH 709Q Isuzu School Bus was proclaimed and attached on a null and void judgment. The attachment was not only voidable for want of jurisdiction of the Small Claims Court but non-compliance with Section 21 of the

Government Proceedings Act. If indeed this asset was attached the law was not followed and the Judgment Creditor must suffer the consequences of compensating the Applicant Educational Institution for any loss and damage suffered on actions taken under the guise of the law when indeed the law of voids applied. There is nothing to stay under Order 42 Rule 6 of the Civil Procedure Rules. The Respondent should familiarize himself with the guidelines issued by the Judiciary on matters which fall under the personal injury claims so that he finds his footprints to pursue the claim appropriately. The costs of this application shall be met by the Respondent. Notwithstanding that he walks naked without a remedy of any kind before this Court as the rights being pursued doctrinal jurisdiction and estoppel applies in equal measure. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 12<sup>TH</sup> DAY  
OF MAY 2026.**

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**R. NYAKUNDI  
JUDGE**