



**Arisa v Kipkebe Limited; Ryce EA Limited (Objector) (Employment and Labour Relations Cause E005 of 2023) [2025] KEELRC 1468 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1468 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E005 OF 2023**

**AN MWAURE, J  
MAY 23, 2025**

**BETWEEN**

**GEOFFREY NYAMAMBA ARISA ..... CLAIMANT**

**AND**

**KIPKEBE LIMITED ..... RESPONDENT**

**AND**

**RYCE EA LIMITED ..... OBJECTOR**

**RULING**

**Introduction**

1. Before this Honourable Court are two applications for determination. The first application is the Respondent/Applicant’s Notice of Motion dated 28<sup>th</sup> January 2025 filed under a Certificate of Urgency seeking for orders that:
  1. Spent
  2. This Honourable Court be pleased to stay execution of the judgment delivered herein on 23<sup>rd</sup> May 2024 and all subsequent orders pending the hearing and determination of this application inter parties.
  3. This Honourable Court be pleased to stay execution of the judgment delivered herein on 23<sup>rd</sup> May 2024 and all subsequent orders pending the hearing and determination of the Intended Appeal.
  4. The ruling of the taxing officer delivered on 15<sup>th</sup> January 2025 and the Certificate of Costs issued herein on 23<sup>rd</sup> January 2025 be set aside and the Party Bill of Costs dated 4<sup>th</sup> June 2024 be taxed afresh by another taxing officer other than Hon. Japhet Bii.



5. The costs of the illegal and irregular execution engendered by the Claimant/Respondent be borne by the Claimant.
2. The Respondent/Applicant stated the grounds, reasons and argument to support the application as follows that:
  1. On 14<sup>th</sup> June 2024, the Claimant's advocates served a Party and Party Bill of Costs dated 4<sup>th</sup> June 2024 upon the Respondent/Applicant's advocates, who responded to the same through submissions dated 11<sup>th</sup> April 2024.
  2. The Respondent's submissions on the Bill of Costs were served upon the Claimant's advocates via email on 8<sup>th</sup> April 2024 in response to the filed submissions dated 15<sup>th</sup> July 2024.
  3. In a ruling delivered on 15<sup>th</sup> January 2025, the Taxing officer indicated that the Respondent did not file a response to the Bill, and hence the Claimant's Party and Party Bill of Costs was taxed without consideration being given to the Respondent/Applicant's submissions.
  4. Having filed and served a response to the Bill of Costs, which has not been considered, the Respondent has been condemned unheard in respect of the Bill of Costs herein.
  5. The Claimant/Respondent has commenced illegal, irregular and unlawful execution of a decree by procuring a certificate of costs without payment, failing to extract and serve the decree, initiating execution before the lapse of the prescribed period for filing a reference against taxation, and obtaining warrants of attachment for movable property without filing an application for execution.
  6. The Respondent/Applicant has filed and served a notice of appeal and letter bespeaking proceedings, and if execution of the judgment proceeds, the Respondent/Applicant's appeal, which has a high chances of success, will be rendered nugatory.
  7. The Claimant has no ability to refund the decretal sum and costs, and hence, if execution proceeds and the Respondent/Applicant's appeal eventually succeeds, the Respondent/Applicant will not recover the amounts paid to the Claimant/Respondent.
3. The application is supported by the affidavit of Henry Eric Omany.
4. On the other hand, the Objector filed a Notice of Motion dated 4<sup>th</sup> February 2025 under a Certificate of Urgency seeking for the following orders that:
  1. Spent
  2. This Honourable Court be pleased to stay execution of the Judgment delivered herein on 23<sup>rd</sup> May 2024 and all subsequent orders pending the hearing and determination of this application inter partes.
  3. The attachment and execution levied on all the objector's vehicles being registration numbers KDP 014X, KDP 149T, KDP 963V KDP 505R, KDP 430U, KDT 489T, KDP 935Q and KDA 049W be lifted and the said motor vehicles be released to the objector forthwith.
  4. The costs of the application are to be borne by the Claimant/Decree-holder and Hegeons auctioneers jointly and severally.
5. The Objector's application stated the following grounds as follows that:



1. The Objector is the rightful owner of all the proclaimed motor vehicles being registration numbers KDP 014X, KDP 149T, KDP 963V, KDP 505R, KDP 430U, KDP 489T, KDP 935Q and KDA 049W, which it uses to transport goods to and from the Respondent's premises.
  2. The Objector is not a party to this suit; they have no relation to the Judgment-Debtor, and they do not owe the Claimant/Decree-holder any money.
  3. The property of the Objector has been unlawfully proclaimed by the Claimant's agents.
  4. If execution continues against the Objector's properties, the Objector is likely to suffer losses which the Claimant/Decree-holder cannot make good.
6. The application is supported by the affidavit of Bernard Nyamere.

### **Claimant/Respondent replying affidavit**

7. In opposition to the application dated 28<sup>th</sup> January 2025, the Claimant/Respondent filed a replying affidavit dated 14<sup>th</sup> February 2025.
8. The Claimant/Respondent avers that he was aware of the judgment delivered in his favour on 23<sup>rd</sup> May 2024.
9. The Claimant/Respondent avers that he filed a party-to-party bill of costs upon the Respondent/Applicant's advocates who participated in the taxation proceedings.
10. The Claimant/Respondent avers that a ruling was delivered regarding the Party to Party Bill of Costs on 22<sup>nd</sup> January 2025, which was communicated via a text message and downloaded from the Judiciary CTS.
11. The Claimant/Respondent avers that he instructed the Hegeons Auctioneers to commence execution.
12. The Claimant/Respondent avers that the auctioneers extracted the certificate of costs and paid the necessary court fees.
13. The Claimant/Respondent avers that the Respondent/Applicant has not demonstrated any step taken to follow up on the decree despite expressing to file an appeal on 4<sup>th</sup> June 2024.
14. The Claimant/Respondent avers that the Respondent/Applicant is being hypocritical complaining about his efforts to expeditiously follow up on the matter and the taxed amount has been set aside or altered.
15. The Claimant/Respondent avers that execution is a legal process, and a mere assertion that an appeal has high chances of success cannot, itself, justify the issuance of a stay order.
16. The Claimant/Respondent avers that the instant application is used as a delaying tactic and is preventing him from enjoying the fruits of his judgment.
17. The Claimant/Respondent urged this Honourable Court to allow the application as prayed and allow half (1/2) of the decretal amount to be released to the Respondent while the remaining half (1/2) should be deposited in court in a joint interest earning account.
18. The Claimant/Respondent did not put a response opposing the Objector's application dated 4<sup>th</sup> February 2025.
19. Parties canvassed both applications by way of written submissions.



## Respondent/Applicant's written submissions

20. The Respondent/Applicant relied on Rule 73(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024, which provides as follows:

“Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.”
21. Order 42 Rule 6 of the Civil Procedure Rules provides that an appeal or second appeal does not automatically pause the execution of a decree or order, but the court issuing the decree or the appellate court may order a stay of execution if sufficient cause is demonstrated. The court to which the appeal is preferred may also review and rule on the stay application. However, a stay of execution will only be granted if the applicant shows that substantial loss would occur without it, files the application without unreasonable delay, and provides security as directed by the court for ensuring compliance with the final decree or order.
22. The Respondent/Applicant submitted that the Court's discretion to stay execution of the decree is uncontested. However, it must be exercised judiciously, adhering to established legal principles. Superior courts have previously addressed similar applications, and the legal framework governing such matters is well-established. The Respondent/Applicant relied on the case of Jamii Bora Bank Limited & Another v Samuel Wambugu Ndirangu [2022] KEHC 1845 (KLR) where the court held that under Order 42 Rule 6(2) of the Civil Procedure Rules, a stay of execution must demonstrate that the substantial loss would occur without it, that the application was made without undue delay, and that adequate security for the decree's performance has been provided. The court cited the case of Butt V Rent Restriction Tribunal (1979), where the Court of Appeal emphasized that granting or refusing a stay is discretionary and should aim to preserve the appeal's effectiveness, avoid rendering it nugatory, and consider any special circumstances, ensuring the decision does not hinder justice. Failure to comply with ordered security can lead to the lapse of the stay.
23. The Respondent/Applicant also relied on the case of Shell Ltd V Kibiru and Another [1986] KLR 410 where the court stated that an appeal against a money decree does not automatically stay execution, and an application for stay must meet the conditions in Order 42 Rule 6(2) of the Civil Procedure Rules, including showing substantial loss to the applicant. Without evidence of such loss, granting a stay is rare, as substantial loss is a key criterion. Courts must balance ensuring an appeal is not rendered nugatory with protecting the Respondent's right to enjoy the judgment's benefits, as emphasized in Wilson V Church (1879) and other rulings.
24. In Jessikay Enterprises Ltd V George Kahoto Muiruri [2022] eKLR, the court stated that the Applicant argued that execution of the judgment would render the appeal “hopeless” without a stay of execution, but the Respondent countered that the Applicant failed to show specific evidence of substantial loss. Execution is a lawful process and does not inherently prove substantial loss. The Applicant needed to demonstrate that the Respondent either could not repay the decretal amount or that making payments would cause significant difficulty, which was not adequately established in this case.
25. The Respondent/Applicant submitted that the record shows that it intended to appeal and filed a notice of appeal promptly. While judgment was delivered on 23<sup>rd</sup> May 2024, costs were taxed on 15<sup>th</sup> January 2025, and execution began on 27<sup>th</sup> January 2025. The stay application was filed promptly on 30<sup>th</sup> January 2025. The draft memorandum of appeal raises substantial issues, and the decretal sum of Kshs.548,775/=, including costs and interest, is significant. The Respondent/Applicant also



- submitted that the Claimant/Respondent would be unable to refund the amount if the appeal succeeds, shifting the burden to the Claimant to prove otherwise.
26. The Respondent/Applicant relied on the case of NCBA Bank Limited v WYSS Logistics Limited [2024] KEHC 1613 (KLR) where the court stated that when an Applicant questions the Respondent's ability to refund the decretal amount, the evidential burden shifts to the Respondent to provide proof of their capacity to do so. This principle, reiterated in ABN Amro Bank NK V Le Monde Foods Limited Civil Application No. 15 of 2002 [NRB], requires the Respondent to easily discharge this burden by demonstrating has assets like land or bank funds. In this case, while the Respondent claimed to be a reputable entity capable of refunding the amount, no concrete evidence was provided to support the claim.
27. The Respondent/Applicant submitted that in this instant case, the Claimant/Respondent failed to provide evidence in the replying affidavit of their ability to refund the decretal sum if paid during execution, thereby not discharging its burden. Consequently, substantial loss to the Respondent/Applicant if the execution proceeds is evident. Regarding security, the Respondent/Applicant expressed readiness to comply with conditions set by the court, suggesting that any security amount be deposited in an interest-earning account rather than in court. The Respondent/Applicant urged this Honourable Court to stay the execution of the decree pending the hearing and determination of the intended appeal.
28. The Respondent/Applicant relied on Rule 11 of the Advocates (Remuneration) Order provides as follows:
- “(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
- (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
29. The Respondent/Applicant submitted that on 15<sup>th</sup> January 2025, the Deputy Registrar taxed the Claimant/Respondent's party and party bill of costs at Kshs.354,521.66/=. Aggrieved, it filed a Notice of Objection to Taxation on 27<sup>th</sup> January 2025, disputing all items in the bill. Although the Deputy Registrar has not provided formal reasons for the decision, the ruling delivered on 15<sup>th</sup> January 2025 contains sufficient reasoning for the reference.
30. The Respondent/Applicant relied on the case of Ahmednasir Abdikadir & Co. Advocates vs. National Bank of Kenya Limited (2) [2006] 1 EA 5 where the court held that Rule 11(1) of the Advocates Remuneration Order requires objections to a Taxing officer's decision within 14 days and references within 14 days of receiving reasons. However, if the reasons for taxation are already detailed in the ruling, seeking additional reasons under Rule 11(2) is unnecessary. The rule's intent is practical, not for ritualistic adherence when sufficient reasons are already provided in the ruling.
31. The Respondent/Applicant submitted that the taxation of the Bill of Costs by the Deputy Registrar is judicial and must ensure both parties' rights to access justice and a fair hearing. While the Respondent/Applicant fully participated and filed submissions opposing the Bill, the Deputy Registrar failed to consider these submissions, violating its rights. Consequently, it has been unfairly treated and urged



this Honourable Court to set aside the ruling of 15<sup>th</sup> January 2025 and the Certificate of Costs, and to direct fresh taxation by a different Taxing Officer.

32. The Respondent/Applicant relied on Rule 72 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides the process for issuing court orders or decrees. The Registrar is responsible for drawing, sealing, and issuing orders or decrees based on the Court's decision, specifying the reliefs, determinations, costs, and relevant dates. Parties can submit draft decrees for approval by the opposing party within seven days, after which the Registrar signs and seals the decree if it aligns with the judgment. If no response to the draft is given within seven days, the Registrar may still finalize the decree. Additionally, the Registrar may assist in preparing decrees for trade unions or self-represented litigants upon request.
33. In *George V Pollman's Tours & Safaris [2023] KEELRC 3347 (KLR)* the court stated that the extraction of a decree before execution is mandatory, and failure to follow due process, such as forwarding the draft decree for approval or serving the final decree, may render the execution process irregular. In this instant case, the Claimant/Respondent failed to explain why the decree was not served, causing potential prejudice to the Applicant. While such failures do not necessarily nullify execution proceedings, they can result in costs being awarded against the responsible party, as emphasized in the case of *Landmark Holdings Ltd V Robert Mecems Kinyua (2018) eKLR*.
34. The Respondent/Applicant submitted that the record shows that no decree was extracted as required, yet the Claimant/Respondent proceeded with irregular execution by attaching the Respondent/Applicant's movable property without a valid decree, proper application for execution, or payment of required fees. The Certificate of Costs and application for execution were submitted long after execution began. These actions were unlawful, and it urged this Honourable Court to declare the execution illegal and order the Claimant/Respondent to bear the resulting costs.
35. The Respondent/Applicant relied on the case of *Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others [2014] eKLR*; the Supreme Court expressed itself stating the costs follow event.
36. Overall, the Respondent/Applicant urged this Honourable Court to allow the application as prayed.

#### **Objector's written submissions**

37. The Objector filed its submission to its application dated 4<sup>th</sup> February 2025. It reiterated Rule 72 of the Employment and Labour Relations Court (Procedure) Rules 2024, as stated in the earlier part of the ruling. The Objector relied on Order 22 Rule 51 of the Civil Procedure Rules, which provides that anyone with a legal or equitable interest in property attached during execution of a decree can object by notifying the court, parties, and decree-holder in writing before the sale proceeds. The notice must include an application supported by an affidavit briefly explaining the claim. This notice and application must be served on all parties within seven days of filing.
38. The Objector relied on the case of *Stephen Kiprotich Koech V Edwin K. Barchilei; Joel Sitienei (Objector) [2019] KEELRC 2572 (KLR)*, where the court stated that in objection proceedings, the objector must provide evidence of a legal or equitable interest in the attached property at the time of attachment. This includes beneficial interests like equity of redemption. The objector must prove that the property was not held for the judgment-debtor or is owned solely by the objector. The case example involved motor vehicles and household items where ownership was contested but supported by Kenya Revenue Authority documents. Under Order 22 Rule 51(1) of the Civil Procedure Rules, objections must be filed before proceeds are paid, with written notice to the court and parties involved. In *Arun C. Sharma v. Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 Others [2014] eKLR*, the court held that the objector must prove entitlement to or legal/equitable interest in the attached



property, whether wholly or partly. The burden lies on the objector to establish this interest as the basis for releasing the property from attachment.

39. The Objector submitted that it complied with Order 22 of the Civil Procedure Rules, 2010, by filing and serving a Notice of Objection along with an application supported by an affidavit. This was served on all relevant parties, including the claimant, respondent, and auctioneers. Responses to such applications should be filed as replying affidavits under Order 22 Rule 54 of the Civil Procedure Rules. Additionally, Order 51 Rule 14 of the Civil Procedure Rules allows respondents opposing applications to file a preliminary objection, replying affidavit, statement of grounds of opposition, or any combination of these.
40. The Objector submitted that the Claimant/Decree-holder did not respond to the application despite being served, and while service to the auctioneers was unnecessary, they also failed to respond. The Objector also submitted that it proved ownership of the proclaimed vehicles with supporting records and showed no connection to the debt. Consequently, the vehicles were unlawfully proclaimed, and this Honourable Court is urged to lift the execution.
41. The Objector submitted that Order 22 Rule 53 of the Civil Procedure Rules grants the Court discretion to award costs when an attachment is lifted. The principle of “costs follow the event” applies, with the losing party typically bearing costs unless special circumstances or public interest dictate otherwise and relied on the case of *Jasbir Singh Rai V Tarlochan Singh Rai*(supra) in support of that proposition. The Objector urged this Honourable Court to find the application of 4<sup>th</sup> February 2025 meritorious and award costs in their favour.

### **Analysis and determination**

42. The court has thoroughly gone through the two applications, replying affidavit together with the submissions by counsels, the issue for determination is whether this Honourable Court should issue stay of execution against the ruling dated 15<sup>th</sup> January 2025 and attachment of movable property.
43. The application dated 28<sup>th</sup> January 2025 is seeking stay of execution pending the intended appeal. Rule 72 of the Employment and Labour Relations Court (Procedure) Rule 2024 and Order 42 Rule 6 of the Civil Procedure Rules have been reiterated in the earlier part of this ruling on the stay of execution.
44. In this instant case, the Respondent/Applicant was dissatisfied with the ruling of the Party to Party Bill of Costs delivered by Hon. Japhet Bii on 15<sup>th</sup> January 2025. In the ruling, the Honourable Learned Magistrate indicated that the Respondent/Applicant did not file a response, thus granting the Party to Party Bill of Costs as prayed amounting to Kshs.354,521.66/=. The Respondent/Applicant had however filed submissions dated 11<sup>th</sup> April 2024 which the taxing Master overlooked. The Claimant in his submissions dated 15<sup>th</sup> July 2024 alluded to the said submissions of the Applicant. The Respondent/Applicant has attached a copy of the draft memorandum of appeal. In the court’s considered view, the Respondent/Applicant has demonstrated how it will sustain substantial loss if the execution proceeds;

The application was filed on 28<sup>th</sup> January 2025 while the ruling by the taxing Master was delivered on 15<sup>th</sup> January 2025. The Claimant/Respondent has not demonstrated he is capable of refunding the decretal sum in the event that the appeal goes against him.

Furthermore, the Respondent/Applicant has submitted they are willing to put in security as will be ordered by the court.

The court has found the Respondent/Applicant has complied with the principles of stay of execution as set out in Oder 42 Rule 6 of the Civil Procedure Rules.



45. The Court persuaded by the holding in the case of SHELL LTD -VS- KIBIRU & ANOTHER (1988) KLR 410 a money decree does not automatically stay execution, and an application for stay must meet the conditions in Order 42 Rule 6(2) of the Civil Procedure Rules, including showing substantial loss to the applicant. Without evidence of such loss, granting a stay is rare, as substantial loss is a key criterion. Courts must balance ensuring an appeal is not rendered nugatory with protecting the Respondent's right to enjoy the judgment's benefits, as emphasized in Wilson V Church (1879) and other rulings.
46. On the application by the Objector dated 4<sup>th</sup> February 2025, this Honourable Court relies on the principles that he who alleges must prove as set out in Sections 107 and 108 of the Evidence Act, which provides as follows:
- “ 107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies in that person.
108. The proof of a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”
47. In this instant case, the Objector has provided motor vehicle records from the NTSA, indicating that all vehicles registered were under its name, and it does not show any connection to the Respondent. For an attachment to proceed, the Claimant/Decree-holder must ensure that the properties being attached truly belong to the Judgment debtor.
48. In Palace Investments Limited V Geoffrey Kariuki Mwenda & Another [2015] KECA 616 (KLR), the Court of Appeal held that in the proclamation and attachment dated 23<sup>rd</sup> November 2004, the appellant did not have a legal or equitable interest in the motor vehicle. The learned judge found that the appellant failed to prove ownership beyond relying on the logbook, which did not establish any other legal basis of interest. The appellant had an obligation to demonstrate legal or equitable ownership at the time of attachment, but it did not fulfil this requirement.
49. In the court's considered view, the Claimant/Respondent did not prove that the motor vehicles belong to the Respondent. The objector RYCE E.A Limited established the motor-vehicles belonged to them and documents from NTSA are provided.
50. Flowing from the foregoing, the application dated 28<sup>th</sup> January 2025 is allowed on the following conditions:
- a. That a stay of execution is hereby granted pending the hearing and determination of the intended appeal.
  - b. The decretal sum of Kshs.548,775/= is to be deposited in court as security pending the determination of the intended appeal.
  - c. The decretal sum to be deposited in court within 30 days from the date of delivery of this ruling.
  - d. In default of the above conditions in (a), (b) and (c) above, the execution to proceed.



- e. The Ruling of the Learned Magistrate Hon. Japhet Bii delivered on 15<sup>th</sup> January 2025 and the Certificate of Costs issued herein on 23<sup>rd</sup> January 2025 be set aside to allow the intended appeal to proceed.
  - f. The costs of the above application be in the intended appeal.
51. The Objector's application dated 4<sup>th</sup> February 2025 is hereby allowed as prayed.
52. The costs of this application of the Objector be borne by the Claimant/Decree Holder and by Hegeons Auctioneers jointly.

Order accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

