



**Coast Bus Mombasa Limited & another v Chepkoech (Suing as Administrator and/  
or Personal Representative of the Estate of Kiplangat Koech Willy - Deceased)  
(Civil Appeal E042 of 2025) [2025] KEHC 713 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 713 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E042 OF 2025  
JK SERGON, J  
JANUARY 30, 2025**

**BETWEEN**

**COAST BUS MOMBASA LIMITED ..... 1<sup>ST</sup> APPLICANT**

**PHILIP ARAKA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EMMY CHEPKOECH (SUING AS ADMINISTRATOR AND/OR PERSONAL  
REPRESENTATIVE OF THE ESTATE OF KIPLANGAT KOECH WILLY -  
DECEASED) ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a chambers summons dated 24th December, 2024 seeking the following orders;
  - i. Spent
  - ii. That the Applicants' Application dated 24th December 2024 be admitted for hearing during this Honourable court's vacation.
  - iii. That costs of the Application be in the cause.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Lydia Kemunto Ongwacho an advocate practicing in the name and style of Kimondo Gachoka and Company Advocates who are in conduct of the instant suit.
3. She avers that while this court was on vacation, the respondent's advocate instructed Hegeons Auctioneers who have since issued warrants of attachments dated 15/12/2024 and upon lapse of 7 days which is on 21/12/2024 the appellants' properties will be attached and sold.



4. She avers that they do not have orders of stay of execution in this appeal and if the Appellants' properties are attached and sold this appeal will be rendered nugatory and the Respondent is not a person of means and in the event the appeal is successful they will not be able to reimburse or return the appellants' properties.
5. She avers that the appellants' application for stay dated 01/09/2024 was stayed pending hearing and determination of an application filed in the trial court Kericho CMCC number 142 of 2023 dated 20/08/2024 which has since been heard and determined, she attached a ruling in respect of the application dated 20/08/2024 filed in Kericho CMCC number 142 of 2023.
6. She avers that that there is an Application dated 02/ 09/2024 is slated for directions on 24/ 02/2025 and if the same is not recertified urgent and stay of execution orders granted in Kericho CMCC E142 of 2023 Emmy Chepkoech(suing as the personal representative/administrator of the Estate of Kiplagat Koech Willy(deceased) vs Coast Bus (mombasa) Ltd, the appellants' properties will be sold rendering the application dated 01/09/2024 and this Appeal nugatory.
7. She avers that they filed an application dated 17/12/2024 for stay of execution in Kericho CMCC E142 of 2023 but they were not granted any interim orders to safeguard this Appeal and the Appellants' properties which are their tools of trade.
8. She was therefore seeking to have the application dated 01/09/2024 be recertified urgent and stay of execution of the decretal sum, costs and interest in Kericho CMCC E142 of 2023 be issued and application for stay dated 01/09/2024 be set down for hearing inter partes on 24/02/2025 when the same is slated for directions before this Honorable court.
9. She avers that if the orders sought herein are not be granted, the Respondent will proceed with execution of the Judgment and Decree rendering this Application, and Appeal herein nugatory.
10. The Respondent filed a preliminary objection dated 17th January, 2025 on the following grounds; -
  - i. That application dated 24th December, 2024 is sub-judice since there exists a similar application pending before the Chief Magistrate's Court in Kericho CMCC No. E142 Of 2023 dated 17th December 2024 and another application pending before the High Court in Kericho High Court Misc. Reference No. E001 OF 2025 dated 3rd January 2025 which are still pending determination by the courts.
  - ii. That the application herein offends the Provisions of Order 22 Rule 22(1) and Order 42 Rule 6 as a similar application cannot be presented concurrently before the trial court and the Appellate court.
  - iii. That the application herein is fatally/incurably defective, bad in law, incompetent and misconceived and the same ought to be dismissed with costs to the Respondent.
11. The matter came up for inter partes hearing, Mr. Mwita learned counsel for the respondent argued that the instant application is sub judice and is similar to High Court Civil Miscellaneous Application No. E001 of 2025 and Kericho CMCC No. 142 of 2023 and should therefore be struck out whereas, Miss Ongwacho for the applicant argued that the application pending before the trial court was withdrawn and is not similar to High Court Civil Miscellaneous Application No. E001 of 2025 where they were appealing against costs by way of a reference.
12. I have considered the application, response and oral submissions by parties and I find that the issue (s) for determination are whether the application dated 01/09/2024 be recertified urgent and set down for inter partes hearing on 24/02/2024 and whether a stay of execution of the decretal sum, costs



and interest in Kericho CMCC E142 of 2023 should be issued pending the inter partes hearing on 24/02/2025.

13. On the issue as to whether to to recertify the application dated 01/09/2024 as urgent, this court finds that vide a ruling of this court dated 30/10/2024 this court stayed hearing and determination of the said application pending the hearing and determination of the application dated 20/08/2024 in Kericho CMCC E. 0142 before the trial court, the application dated 20/08/2024 has since been heard and determined and the trial court rendered its ruling on 01/10/2024. Therefore it is in the interest of justice to have the application reinstated and set down for inter partes hearing alongside the application dated 02/09/2024. This court also notes that the application dated 02/09/2024 in this matter is pending hearing and determination and that the same was slated for inter partes hearing on 24/02/2025 after this court declined to certify the same application as urgent and issue interim orders for stay of execution on 20/12/2024.
14. On the issue as to whether a stay of execution of decree of the trial court in Kericho CMCC E142 of 2023 should be issued pending the inter partes hearing on 24/02/2025. On one part, the applicant contends that they filed an application dated 17/12/2024 for stay of execution in Kericho CMCC E142 of 2023 and they were not granted any interim orders to safeguard the subject matter of the appeal and the appellants' properties which are their tools of trade. On the other part, the respondent vehemently opposed the instant application arguing that there exists a similar application pending before the Chief Magistrate's Court in Kericho CMCC NO. E142 OF 2023 dated 17th December 2024. This court has perused the file and finds that the same is yet to be heard and determined and on this premise the preliminary objection dated 17th January, 2025 succeeds as this court cannot issue orders for stay while there is a similar application seeking for stay of execution in the trial court. It would appear the Applicant is abusing the Court process. However, the Application dated 20/8/2024 which is before the Chief Magistrate's Court having been heard and determined, then the order staying the prosecution of Application dated 1<sup>st</sup> September, 2024 should be set aside which order this Court issues.
15. Consequently, the Application dated September 1, 2024 is fixed for inter-partes hearing on 24/2/2025.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 30TH DAY OF JANUARY, 2025**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Mwita for the Respondent

No Appearance for Ongwacho for Applicant

