



**Nguma v Nzila t/a Prime Automobiles (Civil Appeal E031 of 2025)
[2025] KEHC 12206 (KLR) (Civ) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E031 OF 2025

TW CHERERE, J

MAY 29, 2025

BETWEEN

RALPH EDWARD NZWII NGUMA APPELLANT

AND

MULEI NZILA T/A PRIME AUTOMOBILES RESPONDENT

RULING

“An interim prayer cannot stand in isolation, for it must derive its validity from a substantive and justiciable claim.”

1. The Appellant moved this Court by way of a Notice of Motion dated 06th May 2025, brought pursuant to Sections 1B, 3A, and 63(e) of the *Civil Procedure Act*, as well as Orders 42 Rule 6 and 50 Rule 6 of the Civil Procedure Rules. The sole substantive prayer in the application is as follows:

“That there be a stay of execution pending the hearing and determination of this application.”

2. The application is supported by an affidavit sworn on the same date. The Applicant avers that he is aggrieved by the judgment delivered on 15th April 2025 in SCCCOMM E3693 of 2024 and has preferred this appeal which will be rendered nugatory if the orders sought are not granted.
3. The application is opposed based on grounds of opposition dated 28th May 2025 which state as follows:
 1. That the appeal is not arguable and has no chances of success as it raises issues of facts hence offends section 38 of the *Small Claims Court Act*.



2. That the Appellant consented to the matter proceeding under section 30 and is now seeking to change his mind after a verdict that is unfavourable to him was reached.
3. THAT the application lacks merit and should be dismissed with costs.
4. That in the event the court is inclined to grant stay orders sought, we pray that an order for depositing of the decretal sum as security for due performance of the decree be issued in line with section 42 (2) of the [Small Claims Court Act](#).

Issue for Determination

4. The sole issue falling for determination is whether Notice of Motion dated 06th May 2025, as framed, discloses a competent and justiciable cause capable of sustaining lawful relief.

Analysis and Determination

5. Upon close examination of the application, it is manifest that the only relief sought is an interim order for stay of execution pending the hearing and determination of the very same application. Notably, there is no prayer that subsists the hearing of the application.
6. It is a fundamental principle that interim relief must be tethered to a live and substantive prayer. An application seeking interim relief pending its own hearing is inherently self-defeating, as such a prayer becomes spent once the application is heard and determined and the Court is left with no subsisting issue upon which to pronounce itself.
7. The principle that courts are bound by the pleadings and prayers presented by the parties is well settled. In *Peter Gichuki King'ara v Independent Electoral and Boundaries Commission & 2 Others* [2013] KECA 278 (KLR), citing *Galaxy Paints Co. Ltd v Falcon Guards Ltd* [2000] 2 EA 385, the Court of Appeal held:

“It is trite law, and the provisions of Order XIV of the Civil Procedure Rules are clear, that issues for determination in a suit generally flow from the pleadings, and that a court can only pronounce judgment on the issues arising from the pleadings or such issues as the parties have framed for determination. A court has no power to make its own issues and pronounce judgment on them.”
8. The jurisdiction of this court is confined to the reliefs expressly sought. In the absence of a substantive and final prayer, the application is devoid of any enduring or justiciable issue upon which the Court may properly exercise its jurisdiction.

Disposition

9. In the result, I find and hold as follows:
 1. That the Notice of Motion dated 15th May 2025 is incompetent and improperly constituted and incurably defective, as it discloses no actionable relief
 2. The Notice of Motion is accordingly struck out with costs to the Respondent.

DELIVERED AT NAIROBI THIS 29TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE



Appearances

Court Assistant - Ruth

For Appellant - Present in person

For Respondent - N/A for Odhiambo Owino & Co. Advocates

