



REPUBLIC OF KENYA



KENYA LAW
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**Ramanya & another v Ochieng (Civil Appeal E052 of 2021)
[2025] KEHC 12351 (KLR) (25 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E052 OF 2021
MS SHARIFF, J
AUGUST 25, 2025**

BETWEEN

RAYMOND OTIENO RAMANYA 1ST APPELLANT

WILLIAM NDINYA OMOLLO 2ND APPELLANT

AND

BELINDA ATIENO OCHIENG RESPONDENT

RULING

1. The appellants have approached this court by way of a Notice Motion dated 6th August 2025, supported by the affidavit of Mary Ongong'a sworn on even date wherein they seek for the following orders :-
 1. Spent
 2. That this Honourable Court be pleased to issue an order for release and stay of sale of motor vehicle registration number KBV xxxT, pending the hearing and determination of the application herein and the application dated 4/8/2025 in Bungoma CMCC 110 of 2018 for release of money's in a joint interest earning account in satisfaction of the costs of the appeal herein.
 3. That the costs of this application be provided for.
 4. That the auctioneer's fees be taxed in court.
2. The gist of the appellants' application is that they have a pending application in Bungoma CMCC No E110/2018, wherein they are seeking for orders of release to the Respondent's advocates, of monies held in a joint account in the name of the parties' advocates to defray the cost of this appeal, hence their prayers for the release of the attached motor vehicle registration no KBV xxxT and an order of stay of the sale of the said motor vehicle.



3. This application has been resisted by the Respondent vide a replying affidavit sworn on 18th August 2025 by Anwar Ahmed Esquire Advocate, wherein he deposes that the appellants' application is fraught of material falsehood and misinformation and is aimed at keep the Respondent away from enjoying the fruits of the judgment made by the lower court, wherefore the same is frivolous and is an abuse of court process. It is further deposed that whereas indeed there is a sum of Ksh 94,813 held in a joint account of Messrs Anwar & Company Advocates and Messrs Kimondo Gachoka Advocates, the said sum was deposited pursuant to conditional stay orders made by the trial court pending appeal.
4. Moreover, the Respondent's advocate deposes that the Appellants are yet to settle the decretal sum and cost of the lower court, the appeal and the earlier application for stay and that the attachment of the appellants' subject motor vehicle is in lawful execution for unpaid costs of the dismissed appeal. Further that this court has no jurisdiction to appropriate monies deposited as security pursuant to an order of the lower court, to cater for costs of the appeal.
5. The Respondent's counsel maintains that this application ought to be dismissed and the Appellants' advocate who swore the supporting affidavit to the current application be condemned to meet the costs of this application personally.
6. This application was canvassed by way of oral submissions. The parties' advocates aligned their submissions with their respective clients' position as elucidated in the application and response. This court has duly considered the rival submissions of parties and the issues that arise for determination are as follows:-
 - a. Are the Appellants entitled to the orders sought?
 - b. Who should cater for the costs of this application?
7. This application has been brought under the provisions of the Oxygen principle, the inherent jurisdiction of this Court and under article 159 of the [Constitution of Kenya](#) 2010. The appellants are thus asking this court to promote substantive justice by exercising its inherent jurisdiction in their favour given that their appeal had already been dismissed by my brother Justice Kemei.
8. It is instructive to note that the appellants had filed a similar application for stay of execution dated 7.7.2025 and this court dismissed the same with cost on 21.7.2025. The prayers for stay of execution are thus *res judicata* wherefore the prayer for the release of the attached motor vehicle registration No KBV xxxT is absurd and is unattainable.
9. Section 7 of [Civil Procedure Act](#) CAP 21 provides as follows: *res judicata*

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
10. Public policy demands that litigation must at one point come to and end. The Supreme Court of Kenya rendered itself on the legal doctrine of *res judicata* in the case of [John Florence Maritime Services Limited & Anor v Cabinet Secretary Transport & Infrastructure & Others](#), Petition No 17/2025 Neutral citation: [2021] KESC 39 (KLR) thus :-

“For *res judicata* to be invoked in a civil matter the following elements had to be demonstrated:



- a. there was a former judgment or order which was final;
- b. the judgment or order was on merit;
- c. the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d. there had to be between the first and the second action identical parties, subject matter and cause of action.

... The doctrine of *res judicata* was based on the principle of finality which was a matter of public policy. The principle of finality was one of the pillars upon which the judicial system was founded and the doctrine of *res judicata* prevented a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensured that litigation came to an end, and the verdict duly translated into fruit for one party, and liability for another party, conclusively.”

11. The appellants’ position that they have a pending application for the release of the money held in a joint account of parties’ advocates, to the respondent’s advocates in satisfaction of the costs of the appeal is an erroneous and outrageous one that is deliberately aimed at duping this court as the money held in the said joint account can neither be appropriated by this court nor the appellants for a different purpose other than that which is was intended for. It is instructive to note that the appellants are yet to settle the judgment sum and all the attendant costs of the suit, of the appeal and their earlier application wherefore the sum of Ksh 93,814 held in the joint account is not sufficient to defray of the sums due to the Respondent from them. Indeed, the appellants are out to frustrate the execution process and delay the Respondent from enjoying the fruits of a judgment made in her favour by the trial court. This court will not condone such conduct that is an outright abuse of Court process. The appellants have clearly approached this court with tainted hands.
12. On the balance I do find that this application is devoid of merit and I dismiss it accordingly.
13. The Respondent is awarded costs assessed at Ksh 10,000 payable within 30 days from the date hereof and in the event of default, execution to issue.

It is hereby so ordered.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 25TH DAY OF AUGUST 2025.

M.S,SHARIFF

JUDGE

In the presence of:

Ms Kirabo holding brief for Ms Ongong’a for the Appellants

N/A by Mr Anwar for the Respondent

Peter Machoni – Court Assistant

