



**Okemwa v Philips International Auctioneers & another (Environment & Land
Case E016 of 2022) [2023] KEELC 16682 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16682 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE E016 OF 2022**

M SILA, J

MARCH 28, 2023

BETWEEN

DAVID ONKOBA OKEMWA PLAINTIFF

AND

PHILIPS INTERNATIONAL AUCTIONEERS 1ST DEFENDANT

**UNITED NATIONS SAVINGS & CREDIT CO-OPERATIVE SOCIETY
LIMITED 2ND DEFENDANT**

RULING

1. The application before me is that dated 6 February 2023 filed by the 2nd respondent. It is an application seeking costs of this withdrawn suit. There is nothing filed to oppose the motion.
2. I believe this matter was originated by a Notice of Motion application dated 7 July 2022 which application sought an order to stay execution of a proclamation dated 5 May 2022. The grounds upon which the application was based was that the applicant had borrowed some money from the 2nd respondent and charged the title Central Kitutu/Daraja Mbili/948 and that the 1st respondent, through instructions of the 2nd respondent, issued a proclamation on 5 May 2022 and scheduled a public auction for 12 July 2022. The applicant more or less wished to have this auction stopped. That application came up before Onyango, J on the 12 July 2022 which was the day of the auction.
3. The court observed that the application had come to her attention at 4.30pm and it was likely that the auction had already taken place. She only fixed the application for inter partes hearing on 21 July 2022 but issued no order of stay. Parties did not appear on 21 July 2022 and the court on its own motion directed that the matter be mentioned on 6 October 2022. On that day, only Ms. Wachira was present for the 2nd respondent and she stated that she has never been served with any pleadings. I directed that she be served and the matter be mentioned on 1 February 2023. On that day, Mr. Ongaro for the applicant was present and he applied to withdraw the motion dated 7 July 2022 to which there



was no objection. I allowed the withdrawal and directed any party wishing to have costs to so apply. This application was then filed.

4. The 2nd respondent avers that she appointed counsel and thus deserves costs.
5. As I mentioned there was nothing filed to oppose the motion.
6. I therefore allow it. Costs of the withdrawn motion will be to the 2nd respondent. Since I have seen no plaint or any other pleadings, the suit will be deemed to have been a miscellaneous application and taxation can be on that basis.
7. Orders accordingly.

DATED AND DELIVERED THIS 28TH DAY OF MARCH, 2023.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

