



Mutuma & 2 others v Mugwika & another (Miscellaneous Civil Application E078 of 2023) [2023] KEHC 22946 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E078 OF 2023
TW CHERERE, J
SEPTEMBER 28, 2023**

BETWEEN

**DERRICK MUTUMA 1ST APPLICANT
NEWTON KIOGORA 2ND APPLICANT
ERIC KARIA 3RD APPLICANT**

AND

**FRIDAH GAKII MUGWIKA 1ST RESPONDENT
LIFELINE AUCTIONEERS 2ND RESPONDENT**

RULING

1. By chamber summons application dated August 17, 2023, Applicants seek orders that the court be pleased to stay, lift and or set aside the warrants of attachment dated July 14, 2023 and the notification of sale dated August 3, 2023 and unconditional release of M/V KCL 583B.
2. The application is supported by an affidavit sworn on August 17, 2023 by Orina Moraa in which it is averred that the 2nd respondent had attached M/V KCL 583B even after applicants deposited KES. 434,344/- as ordered by the court on July 25, 2023.
3. 2nd respondent stated that after applicants failed to comply with the the court of July 25, 2023 requiring them to deposit the decretal sum in court, he attached M/V KCL 583B on August 3, 2023 and a week later learnt that Applicants had complied with the court order on August 10, 2023. The deponent urged that he was ready to release the motor vehicle upon payment of his charges and storage charges.
4. I have considered the chambers summons in the light of affidavit evidence on record. It has been demonstrated that as at August 3, 2023 when 2nd respondent attached M/V KCL 583B, applicants had not deposited the decretal sum with the court as ordered on July 25, 2023.



5. From the foregoing, I find that the attachment of attached M/V KCL 583B was lawfully executed and 2nd respondent as an auctioneer is entitled to his charges which ought to be taxed if not agreed upon by the parties.
6. Pending determination of the 2nd respondent's charges and storage costs, it is hereby ordered that 2nd respondent shall release M/V KCL 583B to Applicants upon payment to him of KES. 50,000/- (fifty thousand).

DATED AT MERU THIS 28TH DAY OF SEPTEMBER 2023.

WAMAE. T. W. CHERERE

JUDGE

Appearance

Court Assistant - Morris Kinoti

For Applicant - Mr. Wambua for Kimondo Gachoka & Co. Advocates

For Respondent - Mr. Gikunda for Gikunda Anampiu & Co. Advocates

