



REPUBLIC OF KENYA



**KENYA LAW**

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**Rarlon Kenya Construction Materials Ltd v Feng & 2 others (Civil Suit E824 of 2021)  
[2023] KEHC 26418 (KLR) (Commercial and Tax) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26418 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E824 OF 2021  
A MABEYA, J  
DECEMBER 15, 2023**

**BETWEEN**

**RARLON KENYA CONSTRUCTION MATERIALS LTD ..... PLAINTIFF**

**AND**

**PENG JIAN FENG ..... 1<sup>ST</sup> DEFENDANT**

**LOU GUANG YANG ..... 2<sup>ND</sup> DEFENDANT**

**ENGINEERING COMPANY LTD ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling on the plaintiff's application dated 6/10/2023. It was brought under Order 51 Rule 1 and Section 3A of the *Civil Procedure Act*. It sought orders that the 3<sup>rd</sup> defendant pay auctioneers. Charges of Kshs. 669,200/= and storage Charges of Kshs. 2500/= per day up to the date the same would be collected.
2. There were other prayers, to wit, to permit the plaintiff to auction or privately sell the goods proclaimed on 2/1/2022. That in case of a shortfall, the 3<sup>rd</sup> defendant do pay the difference.
3. The Motion was supported by the affidavit of Brenda M. Luvai sworn on 6/10/2023. It was contended that on 21/1/2023 the goods of the 3<sup>rd</sup> defendant was attached by Betabase Auctioneers in execution of the warrants issued by this court. That the court had ordered that the costs of the auctioneers be borne by the 3<sup>rd</sup> defendant. That the 3<sup>rd</sup> defendant had failed to settle those costs. That the value of those goods is Kshs. 303,000/= and they continue to deteriorate. That the auctioneer charges were Kshs. 669,200/=. That it was just for the orders to be granted.
4. The defendants did not file any response to the application. The application was therefore unopposed.



5. I have considered the averments in the supporting affidavit and the submissions of learned counsel dated 6/12/2023. I have also considered the authorities relied thereon.
6. From the record, it is not in dispute that after an interlocutory judgment was entered the goods of the defendants were proclaimed. Although the court did set aside the same, it nevertheless ordered that the costs of the execution be borne by the defendants. That order has neither been set aside nor appealed against. Further, the auctioneer has intimated his costs to be Kshs. 669,200/=. The same has neither been denied nor challenged.
7. There is also a charge for storage of the goods for nearly a year. Those are costs and expenses lawfully incurred. They must be paid.
8. In view of the foregoing, I see no reason why the application should not be granted. Accordingly, I allow the application dated 6/10/2023 as prayed.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2023.**

**A. MABEYA, FCI Arb**

**JUDGE**

