



REPUBLIC OF KENYA



KENYA LAW
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**Mutua t/a Charlton Auctioneers & another v Omole (Civil Case
E001 of 2020) [2022] KEHC 16655 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL CASE E001 OF 2020
RE ABURILI, J
DECEMBER 19, 2022**

BETWEEN

**CHARLES MUTINDA MUTUA T/A CHARLTON
AUCTIONEERS APPLICANT**

AND

ELISHA OCHIENG ODHIAMBO PLAINTIFF

AND

BOOKER NGESA OMOLE RESPONDENT

RULING

1. By a notice of motion dated December 6, 2022, the auctioneer Charles Mutinda Mutua trading as Charlton Auctioneers seeks from this court the following orders:
 - (1) That this application be certified as urgent and be heard exparte in the first instance;
 - (2) That the court do authorize the Officer Commanding Station (OCS), Mulolongo Police Station in Machakos County or officers under his or her command to accompany the auctioneers Charles Mutinda Mutua trading as Charlton Auctioneers to the defendant's residential house located at [Particulars Withheld] within Machakos County to witness and provide security for the said auctioneer, to gain access to the defendant's resident by breaking the door/gate if necessary and collect the proclaimed property together with motor vehicle No KCX XXXR Jeep in satisfaction of the decree herein which now stands at Kshs 7,368,790.12;
 - (3) That the costs of the application be borne by the defendant.
2. The application is supported by the grounds and supporting affidavit sworn by Mr Charles Mutinda Mutua wherein he explains how his efforts to execute decree in this case, against the defendant Booker Ngesa Omole has been met with threats, resistance and use of gun power to abduct one of



the staff of the auctioneer, with the incident being reported to Syokimau Police Post under OB No XXXXXX/2022.

3. The auctioneer is apprehensive that unless this court orders that that he be provided with security, then he will not manage to execute the warrants of attachment and sale of the properties proclaimed owing to the hostile environment created by the defendant Mr Booker Ngesa Omole the judgment debtor herein.
4. That despite the defendant filing an appeal to the Court of Appeal against the judgment and decree of this court issued pursuant to the judgment delivered on July 28, 2021 and the bill of costs taxed as per the ruling of March 23, 2022, there is no stay of execution of the decree.
5. I have considered the application, the grounds, the supporting affidavit and oral submissions by Mr Otieno advocate holding brief for Mr Oruenjo advocate for the decree holder / plaintiff.
6. I observe that there is no stay of execution of decree issued on July 28, 2021 and bill of costs as per the certificate of costs dated March 23, 2022 in the sum of Kshs 461,658. The decretal sum less costs was Kshs 6,000,000/=.
7. There being no stay of execution, nothing bars the decree-holder from enforcing the decree to recover the damages and costs awarded to him by this court.
8. For the above reasons, and in view of the danger posed to the auctioneer by the defendant Booker Ngesa Omole who is said to be armed with a gun and threatening to shoot the auctioneers who are merely executing decree of this court, I hereby certify the application as urgent and grant the prayers sought in the application dated December 6, 2022. I direct the Officer Commanding Police Station at Mulolongo Police Station in Machakos County to authorize officers under his command to accompany Charles Mutinda Mutua auctioneer and provide him and his staff with security and supervise the execution of warrants of attachment and sale of proclaimed property belonging to the defendant/ judgment debtor Booker Ngesa Omole; and accompany the auctioneer to the defendant's residence at [Particulars Withheld] within Syokimau area of Machakos County to enable the auctioneer access the defendant's house and homestead and take possession of the proclaimed property and where necessary, break the gate or door to the defendant's premise only, in order to gain such access to the defendant/ judgment debtor's premises and collect the proclaimed properties in execution of decree of this court.
9. The defendant shall bear the costs of this application and the cost of engaging the police officers that will provide extra security although the plaintiff or auctioneer is expected to bear the cost which shall be recovered from the defendant in these execution proceedings.
10. This ruling to be typed and order extracted forthwith.
11. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 19TH DAY OF DECEMBER, 2022

R.E. ABURILI

JUDGE

