



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**(CORAM: CHERERE-J)**

**CIVIL APPEAL NO. 44 OF 2020**

**BETWEEN**

**STANLEY GUANTAI GATOBU suing as legal representative of the estate of**

**Nicholas Mutegi Guantai (Deceased)..... APPELLANT/RESPONDENT**

**AND**

**DERRICK MUTEMBEI .....1<sup>ST</sup> RESPONDENT/APPLICANT**

**JANARO NTONGAI.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

**Background**

1. By a judgment of this court dated 22<sup>nd</sup> April, 2021, this court allowed the appeal and apportioned liability at 50:50 % thereby reducing the amount awarded by the trial court by half.
2. Both parties are in agreement that after the Applicants' goods were proclaimed on 15<sup>th</sup> May, 2021, the Applicants' insurer settled the total decretal sum in full on 28<sup>th</sup> May, 2021.
3. Notwithstanding the settlement, Quicklime Auctioneers acting under the instructions of the Appellant went ahead and attached the Applicants' goods and on 31<sup>st</sup> May, 2021 issued a notification of sale to recover Kshs, 150,000/- being auctioneer's costs.
4. By a notice of motion dated 03<sup>rd</sup> June, 2021 filed on 04<sup>th</sup> June, 2021, the Applicants seeks orders that the Respondent and or his agents be restrained from attaching, selling by public auction or otherwise or in any other manner interfering with the operations of the Applicants pending taxation of the Auctioneer's Bill of Costs.
5. The Appellant in his replying affidavit sworn on 12<sup>th</sup> July, 2021 avers that the Applicants' goods were claimed before the settlement of the decretal sum but fails to explain why Applicants' goods were attached long after the decretal sum was paid in full.
6. **Rule 55 of the Auctioneers Act** provide as follows: -

*(1) Except as may be provided by any other written law or by contract the fees set out in the Fourth Schedule payable to the auctioneer for the attachment, repossession and sale of movable and immovable property under court warrants or letters of instructions shall be charged in accordance with these Rules.*

*(2) Where a dispute arises as to the amount of fees payable to an auctioneer—*

*(a) in proceedings before the High Court; or*

*(b) where the value of the property attached or repossessed would bring any proceedings in connection with it within the monetary jurisdiction of the High Court, a registrar, as defined in the Civil Procedure Rules (Cap. 21, Sub. Leg.), may on the application of any party to the dispute assess the fee payable.*

7. From the averments by the parties herein, it is apparent that a dispute has arisen as to the amount of fees payable to the auctioneer.
8. It therefore follows that this is a matter for assessment by the Registrar of this court of fees payable to the auctioneer.
9. In the absence of such assessment, I find that the attachment of the Applicants' goods is irregular.
10. Consequently, this court finds that the Notice of Motion dated 03<sup>rd</sup> June, 2021 and filed on 04<sup>th</sup> June, 2021 has merit and it is allowed in the following terms:

**1) Respondent and or his agents are hereby restrained from attaching, selling by public auction or otherwise or in any other manner interfering with the operations of the Applicants pending taxation of the Auctioneer's Bill of Costs.**

**2) The Respondent and or his agents, more particularly Quickline Auctioneers are hereby directed to forthwith release the goods attached from the Applicants.**

**3) Costs of this application shall be borne by the Respondent**

**DATED IN MERU THIS 29<sup>th</sup> DAY OF July 2021**

**T.W. CHERERE**

**JUDGE**

**Court Assistant - Morris Kinoti**

**For Applicants - N/A for Kimondo Gachoka & Co. Advs**

**For Respondent - Ms. Mukaburu for Kiogora Arithi & Associates**