



**REPUBLIC OF KENYA**

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

**COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL SUIT NO. 286 OF 2015**

**BYRON TRUSTKETT INVESTMENT LIMITED.....PLAINTIFF**

**VERSUS**

**SPORTS STADIA MANAGEMENT BOARD.....DEFENDANT/JUDGEMENT DEBTOR**

**MUGANDA WASULWA T/A KEYSIAN AUCTIONEERS....INTENDED INTERESTED  
PARTY**

**RULING**

1. On 21<sup>st</sup> November 2016, Moran Auctioneers made entry into the Defendant's premises for purposes of executing a Decree herein.

2. Mr. Jovan Kariuki who is a licensed Auctioneer and who trades as Moran Auctioneers depones as follows in an Affidavit sworn on 19<sup>th</sup> May 2017 :-

"14. THAT shortly thereafter the CEO of the Judgment Debtor together with the Accountant, Company Secretary, Legal Manager and the OCS Kasarani came and we held a meeting together at the CEO's Office. I informed the gathering the reason of my visit and that I don't have any capacity to negotiate on behalf of the Decree Holder. The CEO did call the Advocates for the decree holder and the Plaintiff representative and after tedious and lengthy discussion, it was agreed between parties that a sum of Ksh.1,000,000/= be deposited immediately and the balance be paid via posted Cheques in the names of the Advocates for the Decree Holders. Herein is the remittance of Kshs. 1,000,000/= and posted cheques issued. Attached herein is the said remittance and copies of postdated cheques marked as exhibit "JHK 7".

15. THAT after the Advocates for the decree holder and Plaintiff representative informing us of the agreement we proceeded to negotiate our fees with the Judgment Debtor's Legal Manager and the Company Secretary. We agreed on an all-inclusive payment of Kshs.1,800,000/= which was to be paid as follows:-

i. Kshs. 500,000/= to be paid immediately, which was paid.

ii. Kshs.600,000/= to be paid on 20<sup>th</sup> December 2016, a postdated cheque was issued and the same was honored.

iii. The balance of Kshs.700,000/- to be paid on or before 20<sup>th</sup> January 2017. The said

payment has not been paid to date”.

3. Mr. Kariuki is making reference to events of 21<sup>st</sup> November 2016. The Advocate for the Decree Holder does not controvert those averments.

4. My understanding is that the above arrangement compromised the execution proceedings of that day. And it was an arrangement entered with the express concurrence of the Decree Holder’s Advocate. The evidence is that the Judgement Debtor paid Kshs.1,000,000/= on that day and issued 4 post dated cheques of Ksh.1,000,000/=. Two were dated 2<sup>nd</sup> December 2016 and another two on 9<sup>th</sup> December 2016. Although the latter cheques were dishonoured, the Decree Holder was not entitled to seek further execution hereof until there was a default of this arrangement. That default happened on 9<sup>th</sup> December 2016 when the cheques were unpaid.

5. It was therefore wrong for the Decree Holder’s Advocates to write to Court on 23<sup>rd</sup> November 2016 (just two days after Morans execution had been compromised and before default of the arrangement) seeking a re-issue of fresh Warrants in the name of Keysian Auctioneers. It has turned out that the Warrants were indeed issued and Keysian Auctioneers proceeded to proclaim the Judgement Debtors movable property on 28<sup>th</sup> November 2016. It is for that execution that the Auctioneers demand payment of fees for ksh.2,044,720/=.

6. The Execution of 28<sup>th</sup> November 2016 was wrongful and unlawful. There was no need for the Decree Holder to act with such aggression when it had just entered into an arrangement with the Judgement Debtor whose terms included some payments due on 2<sup>nd</sup> and 9<sup>th</sup> December 2016.

7. The decision I reach is that the **Decree Holder** must pay any costs incurred by Keysian Auctioneers.

**Dated, Signed and Delivered in Court at Nairobi this 29<sup>th</sup> day of June, 2017.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Karungo h/b Kithii for Interested Party

Omwenga h/b Ochieng for Plaintiff

Alex - Court Clerk