



**Giriama Central Associates & Property Management Ltd v Baluchi & 2 others;
Muriuki (Applicant); Autoland Auctioneers (Respondent) (Environment &
Land Case 216 of 2012) [2025] KEELC 3168 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3168 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 216 OF 2012**

SM KIBUNJA, J

APRIL 8, 2025

BETWEEN

**GIRIAMA CENTRAL ASSOCIATES & PROPERTY MANAGEMENT
LTD PLAINTIFF**

AND

AYUB SHERO BALUCHI 1ST DEFENDANT

OMAR MOHSEN AHMED MOHAMMED 2ND DEFENDANT

MWAKASA LIMITED 3RD DEFENDANT

AND

JAMES WACHIRA MURIUKI APPLICANT

AND

AUTOLAND AUCTIONEERS RESPONDENT

RULING

1. The applicant filed the notice of motion dated 21st January 2025 seeking for the following prayers:
 - a. “That this honourable court be pleased to certify this application as urgent and that it be heard ex-parte in the first instance.
 - b. That pending the inter parties hearing and determination of this application, this honourable court be pleased to stay the execution of the proclamation of attachment of the applicants property dated 17th January 2025.



- c. That after the inter parties hearing this honourable court be pleased to issue an order prohibiting the 1st respondent (Autoland Auctioneers), 2nd, 3rd, & 4th Respondents , their agents, assigns, employees and/or employees from entering, repossessing, attaching and/or removing any of the applicant’s property from House No. H in Shree Link Estate, Nyali.
- d. That the costs of this application be in the cause.”

The application is premised on the ten grounds on its face marked (1) to (10), and indicated to be supported by the affidavit of James Wachira Muriuki, the applicant.

2. The application is opposed by the 4th respondent through the notice of preliminary objection dated 17th February 2025 that raises two grounds that the application is fatally defective as it contravenes Order 22 Rules 1, 2 & 3 of the Civil Procedure Rules; that it is bad in law, vexatious, an abuse of court process and should be struck out with costs.
3. On the 18th March 2025, the court directed that the application be heard on 3rd April 2025. On that date, Ms. Takah for Nyongesa for 4th respondent and Mr. Mathenge for the applicant/objector made their oral submissions, which the court has considered.
4. The issues for the court’s determinations are as follows:
 - a. Whether there is a properly filed application before the court or is defective and an abuse of the court process.
 - b. Whether the applicant has met the threshold for the prohibition order sought to be issued against 1st respondent.
 - c. Who pays the costs?
5. The court has carefully considered the grounds on the notice of motion and preliminary objection, oral submissions by the two learned counsel, the record and come to the following determinations:
 - a. Going by the margin notes, Order 22 Rules 1, 2, & 3 of Civil Procedure Rules that learned counsel relied on in their preliminary objection, provides for modes of paying money under decree, payment out of court to decree-holder and attachment of land situate in more than one jurisdiction respectively. The application for execution of decree dated 16th December 2024 shows the mode of execution was “by way of attachment and sale of all movable property belonging to the judgement debtor ...”
 - b. Order 22 Rule 51 of Civil Procedure Rules provides as follows on objection to attachment:

“ 51.

- (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.
- (2) Such notice shall be accompanied by an application supported by an affidavit and shall set out in brief the nature of the claim which such objector or person



makes to the whole or portion of the property attached.
[Underlining mine]

- (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.”

Order 52 proceeds to provide that upon a valid notice and application under Order 51 being filed, “the court may order a stay of execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.” It is trite as can be seen under Order 51 Rule 2, the application is required by the use of the word “shall” to be accompanied by an affidavit. I have perused the physical record and CTS and confirmed that the applicant’s/objector’s notice of motion dated the 21st January 2025 and filed on 24th January 2025 is not accompanied by any supporting affidavit, and there is therefore no valid application before the court. In any effort to salvage their application, the court has noted from the CTS that the applicant/objector refiled the said application on 3rd April 2025, at 15.43:43, which was after the hearing of the same date, and when the application was pending this ruling. The refiling of the application on 3rd April 2025 is incapable of salvaging the application filed on 24th January 2025. The 4th respondent preliminary objection on the grounds that the application is fatally defective and an abuse of court process is upheld and the application should be struck out.

- c. The court has noted that vide the affidavit of service sworn by Joseph Ngau Vonza on the 3rd January 2025 [sic] and filed on the 4th February 2025, the application was served upon the 4th Respondent’s counsel among others through email. Though service was disputed by counsel during the hearing, there is no need to make any further determination on the matter in view of the finding in (b) above.
- d. I take this opportunity to call the parties’/counsel’s attention to the provision on Special Powers of the Registrars under Order 49 Rule 7(1)(b)(x) and Rule 2 of Civil Procedure Rules that provides that:

“7.

- (1) The Registrar may –
- (b) hear and determine an application made under the following Orders and rules –
- (x) Order 22 other than under rules 28, and 78:
-
- (2) An appeal from a decision of the registrar under the orders referred to in subrule (1) shall be to a judge in chambers.”

Rule 28 provides for execution through detention in prison or attachment of property or both against a decree debtor in a decree for specific performance of a contract or for injunction who has been given opportunity to obey, but has wilfully failed to do so, while Rule 78 deals with return of purchase money to purchaser where sale of immovable property is set aside



under Rule 75. The instant application is definitely not one under Rules 28 or 78, and should have been fixed before the Deputy Registrar to ensure the parties do not lose their appeal opportunity under Order 49 Rule 2 of the Civil Procedure Rules. The refiled application should therefore, be fixed before the Deputy Registrar.

- e. That under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where otherwise directed for good reasons. That as the objector/applicant notice of motion has been struck out and 4th respondent's preliminary objection upheld, the latter is awarded costs.
6. Flowing from the foregoing determinations on the application dated the 21st January 2025, the court finds and orders as follows:
- a. The 4th respondent's preliminary objection dated the 17th February 2025 is upheld on the ground of the application being fatally defective and an abuse of court process.
 - b. The objector's/applicant's notice of motion dated the 21st January 2025, and filed on the 24th January 2025, is hereby struck out.
 - c. The objector/applicant to pay the 4th respondent's costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 8TH DAY APRIL 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiff/judgement Holder: No Appearance

Defendants/Respondents : Ms Takah For 4th Respondent

Objector/applicant : Mr Mathenge

1st Respondent : No Appearance

Shitemi-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

