



REPUBLIC OF KENYA



**I&M Bank Ltd v Mueni & 3 others; Motorshop East Africa Limited
(Interested Party) (Miscellaneous Civil Application E718 of 2024)
[2025] KEHC 4314 (KLR) (Civ) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E718 OF 2024

JN MULWA, J

APRIL 3, 2025

BETWEEN

I&M BANK LTD APPLICANT

AND

GEOFFREY KIOKO MUENI 1ST RESPONDENT

JAREN BON OMBATA T/A HAZARA AUCTIONEERS 2ND RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY 3RD RESPONDENT

LUCY NEKESA CHELOTI 4TH RESPONDENT

AND

MOTORSHOP EAST AFRICA LIMITED INTERESTED PARTY

RULING

1. Before the Court for determination is the Application dated 26/07/2024 filed by I&M Bank Ltd (the Applicant) against George Kioko Mueni, Jaren Bon Ombata t/a Hazara Auctioneers, National Transport & Safety Authority and Lucy Nekesa Cheloti (hereafter 1st, 2nd, 3rd and 4th Respondents) and Motorshop East Africa Limited, The Interested Party. It is premised on Section 1A, 1B & 3A of the *Civil Procedure Act* (CPA), Order 40 Rule 1 & 2 and Order 51 Rule 1 of the Civil Procedure Rules (CPR) seeking inter alia:
 1. Spent.
 2. Spent.



3. Spent.
 4. That the Honorable Court be pleased to call and place before it the proceedings before the subordinate Court on the Chief Magistrate Misc. Application No. E1292 of 2024 for purposes of interrogating the correctness, genuineness of the proceedings and make any appropriate order/directions to ensure fair administration of justice.
 5. That the public auction sale of the motor vehicle registration number KDL 974W conducted on 21/06/2024 be set aside.
 6. Costs of the application be provided for.
2. The motion is premised on grounds found at the supporting affidavit sworn on 1/8/2024 by Doreen Otieno, a Legal Officer with the Applicant. The gist of her deposition is that vide a letter of offer, the Applicant advanced to the Interested Party an asset finance facility and as security for the loan facility, the Interested Party and the Applicant executed a Hire Purchase Agreement over motor vehicle registration number KDL 974W (hereafter the suit motor vehicle), which was thereafter registered in joint names of the Applicant and the Interested Party.
 3. On 2/10/2023 a decree was issued in favour of the 1st Respondent, Geoffrey Kioko Mueni as against the Interested Party, who took out warrants of attachment and instructed the 2nd Respondent to attach and later sell the suit motor vehicle by way of public auction, which vehicle was sold to the 4th Respondent, Lucy Nekesa Cheloti. She goes on to depose that the 2nd Respondent thereafter speedily, illegally, unlawfully and fraudulently obtained a vesting order in respect of the suit motor vehicle without due service of the application upon the Applicant.
 4. She amplifies the particulars of illegality by stating -; that the suit motor vehicle having been charged under a Hire Purchase Agreement was not available for attachment or sale by way of public auction; that the 2nd Respondent as an officer of the Court failed to disclose Objector proceedings prior to issuance of the vesting order; that the 2nd Respondent abdicated his duties by failing to ascertain ownership of the suit motor vehicle prior to attachment; that the Applicant was never served with 2nd Respondent's motion seeking vesting orders meanwhile the said motion was held and determined the same day of filing; and that delay of over five (5) days in actioning the Applicant's motion seeking to set aside the vesting order was inordinate and prejudiced the Applicant's right over property.
 5. That based on the foregoing the Applicant deposed that it stands to be gravely prejudiced to the tune of Kshs. 2,590,934.64/- by the vesting order, being the outstanding loan amount, which continues to accrue interest until payment in full. She concludes by deposing that this Court ought to call forth or interrogate the proceedings before the lower Court and issue a mandatory injunction for the return of the suit motor vehicle to the Applicant.
 6. The 1st Respondent opposes the motion by way of a replying affidavit he swore on 14/10/2024 confirming that the Applicant had filed objection proceedings which were dismissed vide a ruling delivered on 24/09/2024, adding that if the Applicant was aggrieved by the ruling, the proper recourse was to apply for review or appeal of the said decision neither of which has since been preferred. He goes on to depose that the Applicant's motion seeking to challenge the vesting order is equally scheduled for ruling before the lower Court therefore it is judicious not to pre-empt and await the decision of the lower Court. He surmises by urging this Court to dismiss the Applicant's motion with costs.
 7. The 2nd Respondent opposes the motion by way of a preliminary objection dated 14/10/2024 and a replying affidavit sworn on 11/11/2024 by stating -; that the Court lacks jurisdiction to entertain the same; that the motion is Res Judicata; that the motion is Sub-Judice and an abuse of the Court



process; and that the motion is procedurally fatal, illegal, misconceived, bad in law and untenable. He deposes that the attachment, sale, auction and subsequent issuance of the vesting order was conducted lawfully and in accordance with Rule 17(5) & (6) of the Auctioneers Rules. He equally confirms that the Applicant's objection motion was dismissed vide a ruling delivered on 24/09/2024 in which the court directed the Applicant to file suit to ventilate his claim.

8. Further the 2nd Respondent stated that this Court's supervisory jurisdiction is limited and is only exercised where there is no legal redress by way of a review, appeal or filing suit therefore the instant motion ought not to be used to usurp the legal avenues available to the Applicant, concluding that the Court lacks jurisdiction to entertain the same. He goes on to depose that the Applicant has equally not demonstrated that the subject loan is not being serviced and therefore no prejudice is demonstrated.
9. As to the issue of ownership of the subject motor vehicle, the 2nd Respondent submits that the same has been ventilated twice before the lower Court and that after the fall of the hammer during auction, the purchaser of the suit motor vehicle became the absolute owner as such the instant motion ought to be dismissed with costs.
10. The 4th Respondent on her part equally filed a replying affidavit she swore on 12/11/2024 reiterating that the issue of ownership of the suit motor vehicle has been litigated in two differently constituted Courts of competent jurisdiction and the same cannot be a ground for invoking the supervisory jurisdiction of this Honourable Court; adding that if the Applicant was dissatisfied with the said decisions it ought to pursue the legal remedies available in law being a review or appeal but not improperly invoking the supervisory jurisdiction of this Court.
11. On the issues of Res Judicata and estoppel, the Respondents in unison urge dismissal for the reason that the application is an abuse of the Court process.
12. All the parties filed submissions which the court has carefully considered and has flagged the following Issues for determination;-
 1. Whether the Court ought to exercise its supervisory jurisdiction in respect of proceedings before the subordinate Court in the Chief Magistrate Misc. Application No. E1292 of 2024 pursuant to Article 165 (6) & (7) of *the Constitution*?
 2. Whether the Court ought to set aside the public auction sale of the suit motor vehicle conducted on 21/06/2024?
 3. Who ought to bear the costs of the motion?

Whether the Court ought to exercise its supervisory jurisdiction in respect of proceedings before the subordinate Court in the Chief Magistrate Misc. Application No. E1292 of 2024 pursuant to Article 165 (6) & (7) of *the Constitution*?

13. Article 165 (6) of *the Constitution* specifically provides that -:

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”
14. Sub-Article (7) of the same Article provides that -:

“For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and



may make any order or give any direction it considers appropriate to ensure the fair administration of justice."

15. This Court reasonably believes that in exercise of its supervisory jurisdiction in civil matters over a subordinate Court, it ought to tread lightly, in order not to usurp the subordinate Court's judicial independence pursuant to Article 160 of *the Constitution* and/or usurp the available legal redress of either appeal, review, filing suit, or interlocutory application of setting aside if a party is aggrieved by the decision or the process.

16. Mwongo, J. though addressing himself on a criminal review application in the case of Director of Public Prosecutions v Perry Mansukh Kansagara & others [2020] eKLR rendered in part the considerations when the High Court can exercise its constitutional supervisory jurisdiction as follows;

"I can readily identify the following situations which would merit the court's intervention and in which the court should not hesitate to invoke its constitutional supervisory power. I can think of several situations: - a. Where there are special or exceptional circumstances that cannot be addressed through the statutory revisional powers of the court without undue expense or delay; b. Where there is clear and irrefutable evidence of a violation of the rights of a person whose representation is permitted in law; c. Where the public interest element of the case is so substantial that the court would be deemed as abetting an injustice if it did not intervene to correct the situation; d. In any event, the overriding principle in all cases is that the court must act only with the objective of ensuring "the fair administration of justice."

17. He went on to state that:-

"Where, or if, it is intended to exercise supervisory jurisdiction under *the Constitution*, I think the following safeguards should be observed: a. A balance has to be struck in the exercise of constitutional supervisory jurisdiction to ensure there is no appearance that its object is to micro-manage the trial court's independence in the conduct and management of its proceedings; b. Ideally, constitutional supervisory jurisdiction should be exercised only after the parties are heard on the subject matter in question; c. Supervisory jurisdiction should not be used where the option of revision is appropriate or applicable; d. Supervisory jurisdiction should not be used as a shortcut for an appeal where circumstances for appeal clearly pertain and are more appropriate; e. Supervisory jurisdiction should be exercised to achieve the promotion of the public interest and public confidence in the administration of justice."

18. With the above in mind, the court gathers that the Applicant's complaint revolves around proceedings appertaining to the execution of the decree in Nairobi SCCCMM No. E7015 of 2023 and the eventual sale of the suit motor vehicle that was attached in execution. The Court further gathers that the Applicant imputes both impropriety both from the 2nd Respondent who carried out execution and the lower Court by failing to expeditiously attend to its motion filed under urgency seeking to set aside the vesting order.

19. From the rival affidavit material, it is undisputed that the Applicant and Interested Party had executed a Hire Purchase Agreement and or facility in respect of the suit motor vehicle. It is further not disputed that the 1st Respondent obtained a lawful decree as against the Interested Party, who had instructed the 2nd Respondent to carry out execution of the decree leading to the eventual sale of the suit motor vehicle by way of public auction.

20. It warrants reminder that as at presentation of the instant motion, the suit motor vehicle had already been sold to the 4th Respondent with a vesting order already issued in her favour. Further, the Applicant



appears to have unsuccessfully raised objection proceedings in Nairobi SCCCOMM No. E7015 of 2023 and sought to set aside the vesting order in Nairobi Commercial Misc. Civil Application No. E1292 of 2024, which applications were determined vide court rulings delivered on 29/09/2024 and 05/11/2024 dismissing the motions. The Applicant being aggrieved the 2nd Respondent actions during execution ought to have availed himself to the provisions of Section 26 of the Auctioneers Act which provides that -;

1. Subject to the provisions of any other written law, a person who suffers any special or general damages by the unlawful or improper exercise of any power by a licensed auctioneer shall be entitled to recover any damages directly suffered by him from the auctioneer by action: Provided that nothing in this section shall—
 - a. prevent the auctioneer from claiming contribution or indemnity from any other person;
 - b. limit the damages recoverable under any other written law.
21. The totality of the foregoing, shows no deficit of remedies available to the Applicant, for any purported grievance perceived or otherwise that it may have suffered in the course of proceedings before the lower Court, that would warrant the invocation of this Court’s jurisdiction pursuant Article 165(6) & (7) of the Constitution. Earlier addressing itself to the latter provision, this Court in Yusuf Mohamed Omar v Topline Traders Limited & 2 Others [2018] KEHC 4984 (KLR) the court succinctly stated that:-

“It is not for this court to call and examine how and why a trial Magistrate conducts its court business unless properly moved by way of an appeal as doing so would be interfering with its discretion and judicial independence – Article 160 of the Constitution.”
22. Unless where there were obviously glaring and or palpable injustice before the subordinate Court, parties in civil proceedings ought to avail themselves to available remedies such as appeal, review, interlocutory remedy of setting aside, or instigation of proceedings to recoup damages suffered, as opposed to remedies pursuant Article 165(6) & (7) of the Constitution, as in the case in instant matter. Through the aforecaptioned avenues, the Court is able to have a clear picture of what transpired and the Applicant’s grouse to enable this Court take the requisite steps to rectify the alleged injustice and uphold the fair administration of justice.
23. Accordingly, the Court is not persuaded that the Applicant's Application dated 26/7/2024 is merited. It is dismissed with costs in favour of the 1st, 2nd & 4th Respondents.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI BEFORE THIS COURT ON 3RD APRIL, 2025.

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JANET MULWA.

JUDGE

