



REPUBLIC OF KENYA



KENYA LAW
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**Muriira v Ntiritu & 4 others (Civil Case E001 of 2021)
[2025] KEHC 6446 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E001 OF 2021
HM NYAGA, J
MAY 15, 2025**

BETWEEN

BONIFACE MWENDA MURIIRA PLAINTIFF

AND

PATRICK MUTUMA NTIRITU 1ST DEFENDANT

MAMALO AUCTIONEERS 2ND DEFENDANT

AND

PRIME BANK LIMITED 1ST RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY 2ND RESPONDENT

JOHN GICHU GACHUA 3RD RESPONDENT

RULING

1. The matter for determination is the application dated 8th July 2024 which seeks the following orders :-
 1. Spent
 2. That this honourable court be pleased to order the 2nd respondent and its agent in particular Mt. Kenya Auctioneers Car Yard to release Motor Vehicle Registration Number KDD 282J to the 1st respondent in compliance of the court orders dated 4th July, 2024 pending the hearing and determination of this application.
 3. That in the alternative to prayer 2 above this honourable court be pleased to order the 2nd respondent not to release the motor vehicle to the 5th respondent
 4. That the County Criminal Investigating Officer Meru County be served with the orders of this court to ensure compliance.



5. That this Honourable court be pleased to grant leave to the applicant to institute contempt proceedings against the 2nd respondent.
 6. That this honourable court be pleased to issue an order summoning Martin Kirika T/A Mamalo Auctioneers to appear in court for cross-examination as regards the transfer of motor vehicle Registration KDD 282J.
 7. That this Honourable court be pleased to find the 2nd respondent, Martin Kiriko T/A Mamalo Auctioneers or any other person trading as Mamalo Auctioneers is in contempt of Order of 21st June 2024 and 4th July, 2024.
 8. That this Honourable court be pleased to punish the Marin Kiriko T/A Mamalo Auctioneers for contempt of its orders of 21st June, 2024 and 4th July, 2024.
 9. That this Honourable court be pleased to order the 5th Respondent to transfer the Motor vehicle Registration NO. KDD 282J to the names of the 1st Respondent and the applicant and in default the 4th Respondent do revoke the transfer of the Moto Vehicle which KDD 282J and reinstate it into the names of the 1st respondent and the applicant.
2. The application, brought by the defendant herein, is propped by the grounds set out on its face ad is supported by the applicant's affidavit sworn on even date.
 3. In a nutshell, the applicant avers that he is the defendant herein. That he and the 3rd respondent, has financed are registered a joint owners of motor vehicle registration number KDD 282J. That the said vehicle was illegally attached by the 2nd respondent and he promptly informed the 3rd respondent who filed objection proceedings dated 10th June, 2024. That the said application was heard on 3rd July, 2024 and was allowed. That upon receipt of the said order, he proceeded to court.
 4. Kenya Auctioneers Yard, where his vehicle was stored. That is was the said Auctioneers who called the 2nd respondent but she informed him that the vehicle had been sold hence the order had been overtaken by events.
 5. The applicant questioned how the vehicle was sold, yet he had obtained an order maintaining status quo on 21st June , 2024, which was served on the 1st and 2nd respondents on the same day.
 6. The applicant further avers that he has learnt that the said vehicle was now registered in the name of the 5th respondent. The applicant further avers that the auctioneers has no plausible reason to continue holding the vehicle. That the auctioneers did not provide any documents to him despite requests to do so. That he is well informed that the objector/financier did not give an okay for the transfer of the said vehicle.
 7. It is further averred that the auctioneer's jurisdiction was limited to the County's set out in the licence and therefore could not execute orders in Meru County. That the orders issued on 4th July, 2024 were to the effect that vehicle as to be released unconditionally. That the advertisement of the auction sale was in clear breach of the auctioneers Rules which require a 14 days' notice. That thus the legal procedure on attachment and sale.
 8. In response, the auctioneers Naomi Wanjiku Mwangi, swore an affidavit on 10th July, 2024. The auctioneers, deponed that she is a licensed auctioneer with a Class B License that, she received instructions to execute the decree herein and served the applicant with a proclamation notice dated 23rd May 2024. That the applicant did not redeem his property nor settled the decretal sum and on 3rd June, 2024, the vehicle was attached.



9. That the vehicle was advertised for sale on 13th June, 2024. That prior to the sale, a valuation of the vehicle was done and come the 13th June, 2024, an auction was conducted with the 5th respondent being the highest bidder as Ksh. 2,200,000/=.
10. That subsequently, the vehicle was released to the 5th respondent and he was given a confirmation of sale for use at NTSA.
11. The Auctioneer thus avers that the attachment and sale were lawfully carried out. That by the time the court orders were served, the vehicle had already been sold.
12. The plaintiff did not file a response to the present application what is on record is a response to the application dated 19th June, 2024, which has been dealt with.
13. The application argued vide written submissions, which I have duly considered and will refer them.
14. The issues for determination are:-
 - a. Whether the motor vehicle's attachment and sale was lawful.
 - b. Whether the auctioneer is in contempt of court orders as alleged.
15. It is not in dispute that there were warrants of attachment and sale issued by this court in execution of the decree herein. It is also not in dispute that the subject motor vehicle was attached and sold.
16. From the material before me, it is clear that the Auctioneers duly served the requisite notice proclamation on 23rd May, 2024. The notice was served upon one Eric Kirimi. The applicant does not rebut this evidence. Then on 3rd June, 2024 the vehicle was physically attached. Advertisement was put up on 5th June, 2024 and the sale was conducted 8 days later on 13th June, 2024.
17. The applicants claim is that the Auctioneers had no jurisdiction to execute a decree in Meru County, as her licence was limited to the conditions spelt out in her licence. It is not clear where the attachment took place. The fact that the warrants of attachment were issued by this court does not necessarily mean that the execution could not take place outside Meru County.
18. The purpose of jurisdiction as set out in the licence is to ensure that an auctioneer does not attach and repossess property outside that set jurisdiction. The jurisdiction is not designed to limit the courts which an auctioneer is licensed to accept warrants from. Thus an auctioneer with jurisdiction in say, County A, can receive warrants from a court in County B, but can only execute there within County A.
19. In addition, it is established procedure for auctioneers to seek the Auctioneers Licensing Board's consent to temporarily execute warrants outside their jurisdiction. It was incumbent upon the parties applicant to show that no such consent was obtained, if the vehicle was attached outside the counties set out in the licence.
20. It is my view, that the issue of jurisdiction was not sufficiently raised. In any case, Rule 3(1) of the Auctioneers Rules give the jurisdiction of Auctioneers as follows:-
 3. Application for a licence
 - (1) The Board shall issue two kinds of licences—
 - (a) a class "A" licence which shall be a general auctioneering licence limited to specific districts;



- (b) a class "B" licence which shall be a general auctioneering licence which shall enable the holder to realize charged securities, repossess and sell any property throughout Kenya, execute court orders, and to levy distress within specific districts.

21. My reading of that section is to the effect that only distress for rent is limited. All other acts of a class B licence Auctioneer can be carried out throughout Kenya.

22. The applicant has raised issues on timelines. It is true that the Rules set out timelines. However, in case of an alleged breach, then the recourse is provided under Order 22 Rule 65 of the Civil Procedure Rules which provides as follows: -

Order 22. Rule 65. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

23. In addition, Section 26 of the Auctioneers Act also provides for a remedy in case of improper exercise of powers of an auctioneer. It provides that:

26. Who may not give an accountant's certificate

(1) An accountant is not qualified to give an accountant's certificate, if—

- (a) he has at any time during the accounting period but before giving the certificate, been a partner, clerk or servant of the auctioneer; or
- (b) he is subject to a notice of disqualification under subrule (2).

(2) Where the Board is satisfied that—

- (a) the accountant has been found guilty, by the disciplinary committee appointed under section 29 of the Accountants Act (Cap. 531), of professional misconduct; or
- (b) the accountant has deliberately or negligently failed to comply with this Part, it may notify the accountant concerned in writing and on receipt of that notice the accountant shall not be qualified to give a certificate.

24. Of course, there may be instances that disclose a gross violation of the law that the court has no other choice than to nullify, any sale by an auctioneer, such as where the auctioneer is not licenced, or where no notices are served at all., or sale in defiance of court and in their case, the minor transgressions, if any cannot really vitiate the sale.

25. It is also evident that the orders that the applicant relies on were issued after the sale was conducted on 13th June, 2024, This the orders stopping the sale had been overtaken by events. Of such, it is difficult to hold the Auctioneer in contempt.

26. A conviction for contempt of court must be a clear ground, where a party is aware of the orders and then goes ahead to defy them. This is not the case here.

27. Before I pen off, I have to make one observation. The orders in question were issued in favour of the Objector. It is thus situation that it is not the Objector pursuing the application, but the applicant who is the Judgment Debtor.



28. In my opinion, the Applicant has no locus standi to pursue a claim made in favour of another party, even if he is a co-owner of the vehicle. That is the preserve of the financier who had filed the Objection.
29. It is my view that the applicant is merely trying to go around the orders of the court issued on 27th July, 2023, where the court declined to grant him stay of execution.
30. Having considered this matter, I find that the application lacks merit and is dismissed with costs to the Plaintiff and Auctioneer.

DATED, SIGNED & DELIVERED AT MERU THIS 15TH DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

