



REPUBLIC OF KENYA



Bliss GVS Health Care Limited v Consolata Hospital Mathari & 2 others (Civil Appeal E049 of 2021) [2025] KEHC 8676 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E049 OF 2021
DKN MAGARE, J
JUNE 12, 2025**

BETWEEN

BLISS GVS HEALTH CARE LIMITED APPELLANT

AND

CONSOLATA HOSPITAL MATHARI 1ST RESPONDENT

AUTO GALLERY (MOMBASA) LIMITED 2ND RESPONDENT

CHARDOR AUCTIONEERS 3RD RESPONDENT

RULING

1. The 2nd Respondent sought directions for the payment of the auctioneer's storage charges alleged to be owing at Ksh. 600,000/-.
2. The decree of this court dated 11.7.2024 directed the Appellant to pay storage charges before collecting any attached goods. The Appellant's view is that the projected storage charges of Ksh. 600,000/- is excessive and exorbitant and has no basis of how it arose.
3. The issue is not who should settle the charges. It is what are the charges that are payable.
4. The Appellant did not give their proposal of the charges as to enable this court arrive at a midpoint in estimating reasonable costs payable to the auctioneers. The uncontested position of the parties is that the sum due and owing was Ksh. 1,050,000/-. It is my finding that storage charges of Ksh. 600,000/- are way too excessive and unwarranted and unjustified. It is not shown how the costs arose. As was held in Patrick Otieno Nyapanda v Autozone Motors (K) Limited [2021] eKLR:

The award for storage charges, for all intents and purposes, comprises special damages which should not only be pleaded but must be proven. In this case, the Respondent only claimed that after repossession of the vehicles, they were kept in a yard at a cost of Kshs. 1,000/= per vehicle per day as



storage charges. The Respondent has neither given the name of the said yard nor provided any receipts to prove that indeed it was being charged the said Kshs.1,000/= per day per motor vehicle for storage.

5. Although the Auctioneer is entitled to storage charges, the charges must be specifically proved. The figure of Ksh. 600,000/= is not founded on a specific breakdown. Consequently, the court must specifically determine these charges pursuant to Section 34 of the Civil Procedure Act. the said section states as follows:

1. All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
2. The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
3. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.

For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

6. The issue herein relates to questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree. The amount given are globalised while the appellants maintain that the amounts are excessive without stating how excessive they are. In order to conclude this matter, it is necessary to have bill covering the storage charges only, including dates and rates to enable this court determine how much is payable. This shall not include auctioneers charges or any other charge other than storage charges as ordered.
7. In the interest of justice and noting that the applicant is entitled to storage charges pursuant to the decree of this court, I direct they file a proper affidavit setting out the tenor of the charges and to demonstrate the basis of the charges and rates for the storage charges as per the period covered in the earlier order. The applicant shall exclude periods that storage charges were incurred, if any, in disregard of the court order in situ.
8. The respondent or any party wishing to oppose the same shall respond within 7 days. The Application/ affidavits should be served upon all the affected parties to enable them file their responses.

Determination.

9. The upshot of the foregoing is that I make the following orders: -
 - a. The Applicant shall within 7 days from the date hereof file in court and serve an Affidavit demonstrating the storage charges payable in respect of this matter.
 - b. The Respondents shall file their responses within 7 days of service together with submissions limited to three pages.
 - c. The Applicant shall file submissions limited to three pages within 7 days of service.
 - d. Subsequently, the matter will be mentioned for directions on 22.7.2025.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 12TH DAY OF JUNE, 2025.



RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

Represented by: -

No appearance for the Appellant

No appearance for the Respondent

Sankale for the Interested Party

Court Assistant – Jedidah

