



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Okerio (Suing as Personal Representatives in the Estate of Kelvin Nyangau Onduko - Deceased) v Kassam Hauliers Limited (Civil Appeal E162 of 2023) [2025] KEHC 8391 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E162 OF 2023
RC RUTTO, J
JUNE 12, 2025**

BETWEEN

KENNEDY ONDUKO OKERIO (SUING AS PERSONAL REPRESENTATIVES IN THE ESTATE OF KELVIN NYANGAU ONDUKO - DECEASED) APPELLANT

AND

KASSAM HAULIERS LIMITED RESPONDENT

RULING

1. Before this Court for determination are two applications: a Notice of Motion dated 30th May 2024 filed by the Applicant, and a Notice of Motion dated 7th June 2024 filed by the Respondent.
2. In the Notice of Motion dated 30th May 2024, the Applicant seeks an order authorizing the sale of Motor Vehicle Registration Number KCF 259N (hereinafter referred to as “the subject Motor Vehicle”) pending the final determination of the appeal. The Applicant further seeks an order that the proceeds of sale be released to him in satisfaction of the decretal sum, or in the alternative, that the proceeds be deposited in court pending the outcome of the appeal.
3. The application is premised on the grounds, that: pursuant to Machakos Civil Suit No. 544 of 2018, judgment was delivered in his favour. That that judgment was never appealed. However, the Respondent subsequently filed a declaratory suit, Machakos Civil Suit No. 298 of 2020, in which the court declared the rights and liabilities of the parties. The Applicant states that the Respondent appealed the decision in Civil Suit No. 298 of 2020 through Machakos Civil Appeal No. E151 of 2021, but the appeal was dismissed on 11th January 2023 for want of prosecution. The Applicant further avers that the decree and certificate of costs, in the sum of Kshs.3,122,564/=, remain unsatisfied and continue to accrue interest from 6th December 2021, now exceeding Kshs.4,000,000/=. That the Respondent has not made any payment to date.



4. The Applicant states that he traced the subject motor vehicle belonging to the Respondent, which was thereafter proclaimed and attached. That vide a ruling delivered on 13th March 2024, the court directed the Respondent to deposit Kshs.3,000,000/= in court within 30 days for the release of the subject motor vehicle. However, the Respondent has failed to comply with the said order, and the motor vehicle has since remained in the auctioneer's open yard for over a year, thereby running the risk of devaluation. The Applicant further avers that the subject motor vehicle is the only known asset belonging to the Respondent, and that its release and eventual sale would serve to satisfy the decree issued in 2019. He asserts that there is no legal or financial justification for continued detention of the motor vehicle in the auctioneer's yard, which not only causes depreciation but also undermines his lawful efforts to execute the judgment and enjoy the fruits thereof.
5. The application was opposed by the Respondent through a Replying Affidavit sworn on 14th June 2023 by Kassam Mohammed, a director of the Respondent company. In summary, the Respondent deposed that the Applicant was required to provide security for costs in the appeal. He contended that the Respondent was only required to deposit Kshs.3,000,000/= in court as a substitute to secure release of the motor vehicle being held, and that the Applicant, in turn, was obligated to provide security in the form of a professional undertaking, as stipulated in the Court's ruling an obligation which he has allegedly failed to honour.
6. The Respondent contends that where a condition upon which a court order is predicated is not fulfilled, the consequences of non-compliance take effect automatically, without the need for a further court order. It is therefore his position that the Applicant's failure to provide the requisite undertaking renders both the present application and the appeal non-compliant with the ruling of the Court.
7. The Respondent further depones that in seeking to balance the interests of both parties, the Court should not only consider the rights of the Applicant but also those of the Respondent, who continues to suffer financial loss owing to his inability to utilize the subject motor vehicle. He also alleges that the Applicant seized the motor vehicle without issuing a formal proclamation as required under the Auctioneers Act, and that the seizure was executed improperly, through unnotified access to the Respondent's roads, offices, and agents under colour of a court-issued warrant, without serving the necessary documents authorizing the proclamation of the subject motor vehicle.
8. The Respondent also filed a Notice of Motion dated 7th June 2024 seeking orders for the maintenance of the status quo. The said application was opposed by the Applicant through Grounds of Opposition dated 19th June 2024.
9. In his Further Affidavit sworn on 19th June 2024, the Applicant stated that the Respondent had misapprehended the Court's ruling delivered on 13th March 2024. He averred that in issuing the said ruling, the Court was alive to the existence of the 2019 judgment and the resultant decree in Machakos CMCC No. 544 of 2018, as well as the subsequent declarations made in Machakos Civil Suit No. 298 of 2020. The Applicant asserted that his appeal is unique in that it arises from a money decree, and that he is a decree holder appealing against a judgment debtor. He contended that the Court acknowledged this uniqueness at paragraph 18 of the ruling.
10. The Applicant further stated that the core issue in his appeal is whether he followed due process in executing the decree. He contended that the orders issued on 13th March 2024 were explicit, and that from the language, timelines, and structure of the orders, it was evident that the Respondent was required to strictly comply with the first, second, and third orders. He pointed out that this was underscored by the default clause that followed immediately thereafter. He further stated that the Respondent had, at one point, claimed to have deposited Kshs.3,000,000/= in compliance with the



Court's directive, but no such deposit has been made to date. He also noted that the Respondent's Replying Affidavit is silent on this issue. The Applicant contended that no valid reason has been advanced by the Respondent as to why the subject motor vehicle should not be sold in order to mitigate rising storage costs and exposure to natural elements. He maintained that there is no justifiable basis for continuing to detain the subject motor vehicle in the auctioneer's yard, as doing so only exposes it to further depreciation in value.

11. Pursuant to directions issued by this Court for the disposal of both applications by way of written submissions, the Applicant filed his submissions dated 9th October 2024, while the Respondent filed submissions dated 26th October 2024.

Applicant's Submissions

12. The Applicant submitted on two issues for determination: firstly, whether his application has merit and should be allowed; and secondly, whether the Respondent's application has merit and should be allowed.
13. On the first issue, the Applicant submitted that the central component of his application is a request for permission to sell the subject motor vehicle pending the final determination of the appeal, and that the proceeds of the sale be either released to him in satisfaction of the decretal sum or deposited in court. He reiterated that, vide a ruling delivered on 13th March 2024, the Court directed the Respondent to deposit the sum of Kshs.3,000,000/= in court within 30 days to secure the release of the subject motor vehicle. However, the Respondent has not complied with this directive to date. He further submitted that storage charges and other costs continue to accrue, and that the subject motor vehicle continues to depreciate in value, thereby occasioning financial loss. The Applicant asserted that the Respondent's response to the application is riddled with falsehoods, which he contends offend both the letter and spirit of the Court's orders.
14. The Applicant submitted that the gravamen of his appeal is whether he followed due process in executing the decree issued. He contended that it is undisputed that the Respondent has not paid any amount towards satisfaction of the said decree. The Applicant further submitted that the Court's orders issued on 13th March 2024 were clear and unambiguous, and that their plain and ordinary meaning is self-evident. Accordingly, that the Respondent cannot purport to assign its own interpretation to the said orders in a manner that undermines their intent and effect. While relying on the Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the Applicant emphasized that the Court's orders were time bound and required strict compliance by the Respondent. He submitted that the fourth order requiring his advocate on record to deposit a written irrevocable professional undertaking in court to cover costs of the appeal, loss of user, and auctioneer's charges in the event the appeal was unsuccessful was to take effect after compliance by the Respondent with the first three orders, and not as a condition precedent, as the Respondent suggests.
15. The Applicant further submitted that the Respondent's Replying Affidavit is silent on how it intends to satisfy the decretal sum, which now exceeds Kshs.5,000,000/=. He also dismissed the Respondent's claim that the appeal is time-barred as baseless, contending that the request to strike out the appeal through affidavit evidence is not only procedurally improper but also frivolous and a travesty of justice. Given the prevailing circumstances, the depreciating condition of the subject motor vehicle, and the time it would take for the appeal to be heard and determined, the Applicant urged the Court to authorize the sale of the motor vehicle. He argued that such a sale would mitigate the mounting costs incurred by the auctioneer and avert further substantial loss to both parties in the course of pursuing the appeal.



16. On the second issue, the Applicant submitted that the Respondent's application is vague and lacks clarity, as it seeks to maintain the status quo without defining or articulating what that status quo entails. The Applicant contended that the Respondent has failed to disclose, interpret, or narrate the specific circumstances or legal foundation upon which the maintenance of the alleged status quo is to be based. He further submitted that the Respondent has not provided any plausible justification as to why the subject motor vehicle should not be disposed of, particularly in light of the escalating storage costs and the vehicle's continued exposure to natural elements, which contribute to its depreciation.
17. In conclusion, the Applicant urged the Court to dismiss the Respondent's application dated 7th June 2024. He submitted that there is no legal or financial basis for continuing to detain the subject motor vehicle in the auctioneer's yard. He therefore invited the Court to invoke its inherent powers to authorize the sale of the subject motor vehicle, with the proceeds of the sale either released to him in satisfaction of the decree or deposited in court pending the outcome of the appeal.

Respondent's Submissions

18. The Respondent submitted on two issues for determination: first, whether the Applicant has provided sufficient grounds and security to warrant the grant of permission to sell Motor Vehicle Registration Number KCF 259N; and second, whether the Applicant's application is made with clean hands and in compliance with the procedural requirements under the [Auctioneers Act](#) and other applicable legal provisions.
19. On the first issue, the Respondent submitted, while relying on the decisions in *Equity Bank Limited v Taiga Adams Company Limited* [2006] eKLR and *Mutua v Mutua* [1984] eKLR, that the Applicant has failed to demonstrate compliance with the requirement to provide security for costs, as prescribed in the Court's ruling dated 13th March 2024. The Respondent further submitted that the Applicant has not met the threshold under Section 63(e) of the [Civil Procedure Act](#), which requires the provision of security as an indication of good faith. Citing *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Respondent argued that failure to comply with this requirement renders the application legally untenable, and that the sanction prescribed in the Court's ruling becomes effective without the need for further orders.
20. The Respondent also contended that the Applicant's appeal and application are barred by laches, having been filed outside the prescribed time limits and without any valid justification for the delay. It was submitted that the Court's ruling in CMCC No. 298 of 2020, as confirmed by the decision delivered on 21st July 2023, found that the Applicant's extension of the decree and certificate of costs was irregular, unlawful, and contrary to principles of procedural fairness. The Respondent further submitted that the Applicant's continued pursuit of the matter, notwithstanding the trial court's pronouncements, amounts to an abuse of the judicial process. Referring to the decision in *Njagi v Commissioner of Police & Another* [2010] eKLR, the Respondent maintained that the purported attachment of the subject motor vehicle was based on a misapplication of the decree issued in CMCC No. 298 of 2020, thereby reflecting a fundamental misunderstanding of the legal framework governing execution proceedings.
21. On the second issue, the Respondent submitted that the seizure of the motor vehicle was conducted in violation of Section 10 of the [Auctioneers Act](#), which mandates the issuance of a proclamation notice. The Respondent further submitted that the Applicant not only failed to provide such notice but also acted in disregard of the prescribed statutory procedure, thereby compromising the Respondent's right to due process under Article 47 of [the Constitution](#) of Kenya. The Respondent relied on the cases of *Isaac Siwi Mbiti v Kenya Shell Limited* [2007] eKLR and *Kenya Commercial Bank Limited*



v Specialised Engineering Company Limited [1982] eKLR, in submitting that the Applicant's non-compliance with procedural safeguards dis-entitles him from the relief sought in this application.

22. The Respondent concluded by submitting that the Applicant's application is without merit and ought to be dismissed with costs.

Analysis and Determination

23. I have considered the Notice of Motion dated 30th May 2024 by the Appellant/Applicant, the Replying Affidavit by the Respondent, the subsequent application by the Respondent dated 7th June 2024, the affidavits in response, the submissions by both parties and the Court Order issued on 13th March 2024. The key issue for determination is;

Whether the Respondent's failure to comply with the court order of 13th March 2024 justifies granting the Appellant permission to sell Motor Vehicle Registration No. KCF 259N pending appeal.

24. The order issued on 13th March 2024 was a carefully balanced directive aimed at protecting the competing interests of the decree holder and the judgment debtor. The order directed the Respondent to deposit the sum of Kshs.3,000,000/= in court and to pay the auctioneer's costs within thirty (30) days as a precondition for the release of the subject motor vehicle. Notably, the order also provided that if the Respondent failed to comply within the said period, a stay of execution of the lower court's ruling would issue, and further, that the Appellant was to provide a written irrevocable undertaking for costs should the appeal fail.

25. It is undisputed that to date, the Respondent has not deposited the Kshs.3,000,000 nor paid the auctioneer's costs as directed. The Respondent has not offered a credible explanation for this non-compliance, nor have they made efforts to provide alternative security or arrangements that demonstrate an intention to comply with the ruling. In Republic -vs- County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi [2018] eKLR this court stated that;

“ Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly.”

26. From the foregoing, compliance with court orders is mandatory and not subject to discretion. A party must adhere to court orders and directives and cannot rely or seek refuge in equitable doctrines to circumvent the consequences of non-compliance. The Respondent contends that Order No. 4 of the ruling grants a blanket stay of execution even without complying with Orders No. 1 and No. 2.

27. This interpretation is both legally and logically flawed. The order clearly provides a conditional framework with clearly defined timelines. Specifically, initial compliance was required within 30 days to facilitate the release of the subject motor vehicle. Failure to comply does not result in a stay of execution of the Applicant's lawfully obtained decree in CMCC No. 544 of 2018, but rather only affects the execution of the lower court's ruling. To read the order and interpret it as providing unconditional protection to a party that fails to comply would undermine the judicial authority of the court and effectively promote impunity.

28. The court cannot issue orders in vain. Furthermore, even if this Court was to agree with the interpretation by the Respondent on its compliance with Order 1 of the orders of 13th March 2024, the Applicant herein has attached in its further affidavit Exhibit K001, a written undertaking as per Order 5 although I have noted that the same was not filed in court as ordered.



- 29. I also note that the Applicant is a decree holder with a valid and enforceable decree stemming from Machakos CMCC No. 544 of 2018. The Respondent has made no payment whatsoever toward satisfaction of the decretal sum, which continues to attract interest and now exceeds Kshs.4 million. The continued detention of the subject Motor Vehicle in the auctioneer’s yard, continues to accrue storage fees and diminishing in value, thus causing prejudice to both parties but disproportionately affects the Applicant.
- 30. The Respondent raised issues about procedural improprieties under the *Auctioneers Act*, specifically the lack of and absences of a formal proclamation and notice as required under Section 10 of the Act. While adherence to statutory procedures is essential, the Respondent has had sufficient time to challenge the execution process but instead has sort to maintain the status quo and oppose the enforcement action without demonstrating compliance or offering a settlement.
- 31. Furthermore, any alleged irregularities in the execution process should be addressed through a formal application to set aside the warrants or execution proceedings, rather than being used as a defense for failing to satisfy a valid decree. The Respondent’s approach does not align with the proper legal recourse available in such matters.
- 32. In view of the foregoing, I make the following orders as follows;
 - a. The Appellant’s/Applicant’s application dated 30th May 2024 is hereby allowed.
 - b. The Court hereby authorizes the sale by public auction of Motor Vehicle Registration Number KCF 259N under the supervision of a licensed auctioneer duly appointed in compliance with the *Auctioneers Act*.
 - c. The proceeds of sale, after deducting auctioneer’s lawful charges and any applicable storage fees shall be deposited in court within seven (7) days of sale pending the hearing and determination of the appeal.
 - d. The Respondent’s application dated 7th June 2024 is dismissed with costs.
 - e. Costs of both applications shall be borne by the Respondent.

Orders accordingly.

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

RHODA RUTTO

JUDGE

In the presence of;

.....for Applicant

.....for Respondent

Sam Court Assistant

