



REPUBLIC OF KENYA



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**Chemwa & another v Lonnghorn Publishers Plc (Miscellaneous Case E447 of 2021)
[2025] KEHC 10716 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CASE E447 OF 2021**

F GIKONYO, J

JULY 3, 2025

BETWEEN

GEOFREY WEKESSA CHEMWA 1ST CLAIMANT

STEPHEN NGANGA MBURU 2ND CLAIMANT

AND

LONNGHORN PUBLISHERS PLC RESPONDENT

RULING

1. Before me is the respondent/ applicant's the notice of motion dated 22nd August 2024, expressed to be brought under Order 22 Rule 22, 1 Rule 2, Order 42 Rule 6(1) of the Civil Procedure Rules, seeking:-
 - a. A stay of the proclamation dated 19th August 2024 and warrants of attachment and sale dated 14th August 2024.
 - b. The setting aside, cancellation, and/or recalling of the proclamation dated 19th August 2024 and warrants of attachment and sale dated 14th August 2024 served upon the respondents for having been issued unprocedurally and irregularly, as the decretal sums plus costs was paid to the claimants' advocates.
2. The application is supported by affidavit sworn by the applicant's managing director, Maxwell Wahome, on 22nd August 2024, and written submissions dated 10th October 2024.

Background

3. Judgment was entered on the 30th June 2023 for Kshs. 35,098,333.72/= together with costs and interests of the suit by Justice Mabeya. The parties entered into a post-judgment consent dated 10th



August 2023, which was adopted as an order of the court. As per the terms of the consent, the decretal sum, inclusive of interest, was Kshs. 39,416,358/=.

4. The claimants/ respondents' advocate called for the payment of the decretal sums, following which payments were made by the applicant as follows:-

No.	Date	Amount
a.	31 st August 2023	Kshs. 2,883,272/=
b.	31 st August 2023	Kshs. 5,000,000/=
c.	29 th September 2023	Kshs. 15,766,543/=
d.	16 th February 2024	Kshs. 4,500,000/=
e.	2 nd July 2024	Kshs. 2,500,000/=
Total		Kshs. 30,649,815/=

5. The applicant had paid a total of 30,649,815/= towards the settlement of the decretal sum, leaving an outstanding balance of 8,766,543/=.
6. Despite the applicant experiencing financial challenges, it endeavoured to make the payments and subsequently processed the balance of Kshs 8,766,543/=, which was paid on 19th August 2024.
7. The applicant at the time of proclamation had settled the entire decretal sum and had furnished the auctioneers with proof. However, the auctioneers were unmoved and proceeded on to proclaim the applicant's movable goods.
8. The respondents' advocate, despite knowing that the entire decretal sums had been paid in full, went ahead to instruct Icon Auctioneers notwithstanding the existence of the post judgement consent, which was binding upon all the parties.
9. Icon Auctioneers issued a proclamation and warrants of attachments and sale of the applicant's motor vehicles registrations KCF 134N, KCE 400Z, KCD 336H, KDG 302K, KDG 361M, KDG 336H, KDG 127A, KCC 682N and KCD 039Y.

Grounds

10. The application is based on the following grounds:-
- The said proclamations and warrants of attachment and sale are irregular, erroneous and should be set aside since the decretal sum and interests have been paid in full.
 - The applicant stands to suffer injustice, irreparable loss and damage if Icon Auctioneers are allowed to proceed with the attachment and sale of its motor vehicles and movable assets, as they are its tools of trade.
 - No prejudice shall be occasioned upon the respondents if the orders sought are granted, as they have already been paid the fruits of their judgment.
 - It is in the interest of justice that this application be allowed.



11. The applicant relied on:-
 1. Mary Wambui Migadde v Ecobank Limited & 3 others [2009] eKLR
 2. Oteng'o & 9 others v Girish Kumar Patel t/a Tej Dip Hardware Stores [2023] eKLR
 3. Karuri Stores Pharmaceuticals Ltd & another v Acacia Medical Centre Limited [2021] eKLR
 4. Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR

Response

12. The respondents filed a replying affidavit sworn by Dr. Stephen Nganga Mburu on 30th September 2024 and written submissions dated 31st January 2025. They urged the court to strike out the application with costs because it is incurably defective.
13. The respondents highlighted that the applicant did not settle the decretal sum as ordered by the court. It subjected the respondents to inordinate delays, thus denying them the fruits of their judgment.
14. The respondents deposed that after extensive engagement between counsel for the parties culminating in a consent dated 10th August 2023, the applicant undertook to pay the decretal sum and other inclusive costs through instalments as follows:-
 - a. On or before 31st August 2023 – Kshs. 7,883,272/=;
 - b. On or before 30th September 2023- Kshs. 15,766,543/=;
 - c. On or before 31st October 2023- Kshs. 15,766,543/=
15. The respondents indicated that the parties had made an agreement that in the event of default on any of the instalments, the amount due would attract interest at the rate of 14% p.a. That the applicant complied in payment of the first and second instalment but defaulted in the last instalment. That the respondents' advocates sent numerous reminders to the applicant. That in the course of time, the applicant made two (2) haphazard late payments as follows:-
 - a. Kshs 4,500,000 on 16th February 2024, three months late from the date the third instalment was payable.
 - b. Kshs 2,500,000.00 on 2nd July 2024, which was eight months late from the date it was to be paid.
16. According to the respondents, the amount was not settled as at 16th August 2024 and bearing in mind the applicant's continuous default and previous conduct, their advocates proceeded to instruct auctioneers to proclaim.
17. The respondents relied on:-
 1. National Industrial Credit Bank Limited v S. K. Ndegwa Auctioneer [2005] eKLR
 2. Capture Solutions Limited v Nairobi City Water and Sewerage Company Limited [2020] eKLR
 3. Nanda Properties LTD v Amreek Singh Mudher & another [2021] eKLR
 4. Continental Homes Limited v Suncoast Investments Limited [2018] eKLR
 5. Anne Mumbi Hinga v Victoria Njoki Gathara [2009] eKLR



6. Zadock Furnitures Systems Limited & another v Central Bank of Kenya [2014] eKLR
7. Power Pump Technical Company Limited v County Government of Kitui [2018] eKLR

Analysis and Determination

18. Are there grounds for setting aside the warrants of attachment and the proclamation?
19. I have examined the warrant of attachment of movable property dated 14th August 2024. It states that the sum of Kshs. 55,499,483.30/- is the amount or balance of the decree and costs still remaining unsatisfied. I have also examined the proclamation dated 19th August 2024. It states that the decretal amount is Kshs. 55,499,483.30/- and that the auctioneers charges are Kshs. 3,500,000/-.
20. I have further examined the decree dated 7th August 2024 and the consent dated 10th August 2023.
21. The salient terms of the consent are:-

“The judgment sum of Kshs. 39,416,358 shall be settled in three instalments as follows:-

 - d. On or before 31st August 2023 – Kshs. 7,883,272/=;
 - e. On or before 30th September 2023- Kshs. 15,766,543/=;
 - f. On or before 31st October 2023- Kshs. 15,766,543/=
22. The basis of the application is that the applicant has settled the entire decretal sum, as follows:-

No.	Date	Amount
a.	31 st August 2023	Kshs. 2,883,272/=
b.	31 st August 2023	Kshs. 5,000,000/=
c.	29 th September 2023	Kshs. 15,766,543/=
d.	16 th February 2024	Kshs. 4,500,000/=
e.	2 nd July 2024	Kshs. 2,500,000/=
f.	19 th July 2024	Kshs. 8,766,543/=,
Total		Kshs. 39,416,358 /=-

23. From the consent, it is not in dispute that the judgment sum is Kshs. 39,416,358, inclusive of interest on the awards and reimbursable costs, inclusive of interest.
24. It is not in dispute that the last instalment of Kshs. 15,766,543/= was settled with a delay. The deadline was 31st October 2023, yet the applicant paid in three instalments of Kshs. 4,500,000/=, Kshs. 2,500,000/= and Kshs. 8,766,543/= on 16th February 2024, 2nd July 2024 and 19th August 2024 respectively.
25. The respondents contend that due to the delay, they are entitled to interest on the outstanding sum.



26. Para. 3 of the consent dated 10th August 2023 reads:-

“The Claimants shall be at liberty to execute against the Respondent for any outstanding amount together with interest as at the date of default at 14% per annum in the event of default in payment of any of the installments in paragraph 2 above.”

27. From the above, I find that the respondents are entitled to 14 % interest on default in payment of the third instalment of Kshs. 15,766,543/=.

28. There are email correspondences exchanged between the parties' advocates in respect of the third instalment. On 30th November 2023, the respondents' advocates notified the applicant's advocates that the Kshs. 15,766,543/= was due on or before 31st October 2023, and that it would attract interest until payment in full.

29. On 4th December 2023, the applicant's advocates indicated that the delay in payment was due to a slowdown in collections. They requested that the execution be held off as the applicant could pay the balance in two instalments of Kshs. 5M on 20th December and the balance on 28th January 2024.

30. On 6th December 2023, the respondents' advocates responded that the applicant was acceptable to the proposal to pay costs within 60 days.

31. Subsequently, the applicant paid Kshs. 4,500,000/- balance and Kshs. 500,000/- costs on 16th February 2024 and Kshs. 2,500,000/- on 2nd July 2024.

32. On 2nd July 2024, the respondents' advocates wrote that Kshs. 11,266,533.45/- was due to his clients, being Kshs. 8,766,533.45/- together with interest at the rate of 14% p.a. calculated from 30th June 2023.

33. On 13th August 2024, the respondents' advocates wrote that they would execute unless full payment was received on 16th August 2024.

34. On 15th August 2024, the applicants' advocates sought confirmation that the sum owing was Kshs. 8,766,000/-.

35. On 16th August 2024, the respondents' advocates indicated that the balance was Kshs. 8,766,533.45/- together with interest at the rate of 14% p.a. calculated from 30th June 2023. This was replicated in a letter dated 20th August 2024, detailing that the 14 % interest was payable on all amounts received after 30th October 2023. The relevant parts are reproduced below:-

“ a. Kshs. $4,500,000.00 \times 3/12 \times 14\% = 157,500.00$

This amount was received on 16/2/2024, three months default.

b. Kshs. $2,500,000.00 \times 8/12 \times 14\% = 233,333.00$

This was received on 2/7/2024, 8 months default.

c. Kshs. $8,766,573.00 \times 10/12 \times 14\% = 1,022,763.00$

This amount was received on 19/8/2024, 10 months default.

Total interest payable is Kshs. 1,413,596.00”

36. A sum of Kshs. 8,766,533.45 and Kshs. 1,413,596.00 is Kshs. 10,180,129.45.



37. The claim for Kshs. 11,266,533.45 being Kshs. 8,766,533.45 together with interest at the rate of 14% p.a. calculated from 30th June 2023 was not justified. This is because the due date fell on 30th October 2023.
38. The correct amount of interest due is Kshs. 1,413,596.00 as per the letter dated 20th August 2024.
39. As at the date of the warrant, the outstanding sum was Kshs. 8,766,543/- and interest of Kshs. 1,413,596.00. The total amount owing was Kshs. 10,180,139.00, yet the outstanding amount on the warrant of attachment and the proclamation was Kshs. 55,499,483.30/-.
40. I find that the warrant of attachment and the proclamation are irregular to the extent that they sought to execute the entire judgment sum of Kshs. 55,499,483.30/-.
41. I am satisfied that the applicant has met the threshold for the orders sought.
42. Since the applicant paid the Kshs. 8,766,543/- it is now only obligated to pay the interest of Kshs. 1,413,596.00/-.

Disposition

43. In the upshot, the application dated 22nd August 2024 is allowed, in the following terms:-
 1. The warrants of attachment and sale dated 14th August 2024 and the proclamation dated 19th August 2024 are hereby set aside.
 2. I direct the applicant to pay the interest of Kshs. 1,413,596.00/- to the respondents within 45 days of today, failure to which the respondents are at liberty to take out fresh warrants limited to Kshs. 1,413,596.00/-.
 3. Costs of this application are awarded to the applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3RD DAY OF JULY, 2025

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F. GIKONYO M.

JUDGE

In the presence of: -

1. Ms. Awuor for defendant
2. Njomo for Claimants
3. Kinyua C/A

