



**Wanjiku t/a Little Vineyards Auctioneers v Njorog t/a Freeman
Auctioneers & 2 others (Miscellaneous Civil Application
E236 of 2023) [2025] KEHC 10444 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E236 OF 2023**

A MSHILA, J

JULY 11, 2025

BETWEEN

**JAMES NG'ANG'A WANJIKU T/A LITTLE VINEYARDS
AUCTIONEERS APPLICANT**

AND

**WAIRERI SOLOMON NJOROGE T/A FREEMAN AUCTIONEERS 1ST
RESPONDENT**

MARY MUTHONI MUGUIMI 2ND RESPONDENT

MILHAN ACCESS CAPITAL 3RD RESPONDENT

RULING

1. Before court is an application by way of Notice of Motion dated on 20th December, 2023 and brought under Sections 1A, 1B & 3A of the [Civil Procedure Act](#), Order 51 Rule 1 of the [Civil Procedure Rules](#), Rules 6, 9 (1) a & b (2) and 14 of the [Auctioneers Act](#) and all other enabling provisions of the law. The Applicant sought for orders:-
 - a. Spent
 - b. That the Honourable Court be pleased to grant an order of stay of execution of the warrants of attachment and/or Police Assistance dated 9th November, 2023 in Milimani Miscellaneous Application E1705 of 2023 by the 1st Defendant pending the hearing and determination of this application.
 - c. That this Honourable Court be pleased to stay, set aside and/or annul warrant of attachment and/or Police Assistance dated 9th November, 2023 in Milimani Miscellaneous Application



E1705 of 2023 by the 1st Respondent which proclamation has been overtaken by events pending the hearing and determination of this application.

- d. That this Honourable Court be pleased to issue a declaration that the warrants of attachment and/or Police Assistance issued by Freeman Auctioneers are illegal, un-procedural and unlawful.
2. The application is premised on the grounds that the second proclamation by the 1st Respondent has been overtaken by events as the Proclamation by the High Court at Kiambu takes precedence over the one issued by the lower court in Milimani as such it is unlawful and the orders sought ought to be granted.
3. James Ng'ang'a Wanjiku swore his affidavit in support of his application. He avers that Kihara Ndiba & Co. Advocates filed a Bill of Costs against Pamoja Women Development Programme where the 2nd Respondent is the Chief Executive Officer. A ruling in their favour required that the law firm be paid Kshs.800,730/=. The law firm has obtained warrants of attachment and sale on 14/7/2023 respectively, to be executed by them where they proclaimed motor vehicle registration number KCB 953C. An application dated 2/8/2023 objecting to the execution was dismissed by this court on 28/9/2023 as such the auction proceeded on 7/10/2023 where the highest bidder offered to pay Kshs.1,350,000/= with a deposit of Kshs.600,000/=. Without the knowledge of the existing case, the 1st Respondent obtained an order to proclaim the suit motor vehicle as such the Applicant seeks an order of stay and/or set aside the order issued in Milimani Law Courts. The Applicant is apprehensive that they could lose the vehicle as a result of the second attachment hence suffer substantial loss.
4. Gibson Monari the Head of Collections Department of the 3rd Respondent filed his replying affidavit dated 12th February, 2024 where he deposed that the instant application should have been filed at the Milimani Commercial Courts instead of Kiambu Law Courts. The suit motor vehicle allegedly proclaimed by the Applicant was offered as security by the 2nd Respondent to secure a loan from the 3rd Respondent for a sum of Kshs. 1,300,000/=. Nothing has been placed before court to demonstrate that the actions of the 1st and 3rd Respondent are illegal. The Applicant's application was said to be an abuse of the Court process. No good reasons have been given why the order in Milimani should be vacated. The Applicant was advised to find an alternative. The claim that the vehicle was sold in a public auction is just allegations as the vehicle is a security for a loan.
5. The parties were directed to canvass the application by way of written submissions.

Applicant's Submissions

6. The Applicant submits that they conducted due diligence prior to attaching the subject matter. The vehicle was solely owned by the 2nd Respondent. The 3rd Respondents were said to be in cahoots with the 2nd Respondent to frustrate the execution process. The claim that the first proclamation was illegal was said to be unchallenged and as such a delaying tactic. The second proclamation was said to have been overtaken by events and an afterthought. It was submitted that the 3rd Respondent's equity of redemption was extinguished at the fall of the hammer. Reliance was placed in the case of *Kamulu Academy Limited & another v British American Insurance (K) Ltd & 2 others* (2018) eKLR.

Respondent's Submissions

7. The Respondent submits that the subject motor vehicle was wrongly proclaimed as it had been offered as security for a loan. Reliance was placed in the case of *Kirti Enterprises Limited v Wadia Construction Company Limited; I & M Bank Limited (Objector)* (2022). It was submitted that the applicant cannot



purport to sell the subject motor vehicle in an auction when the vehicle is still secured as the only security for a loan for a loan of Kshs.1.3 Million by the 3rd Respondent. The right court to grant the orders sought was said to be the Milimani court as such the instant application was said to be an abuse of the court process and should be dismissed with costs.

Issues for Determination

8. Having considered the application by the Applicant, the Replying Affidavit and the rival submissions, the main issue arising for determination is whether the order for stay and/or set aside should be granted.

Analysis

11. The Applicant herein alleges that the subject motor vehicle was sold at a public auction as such the second proclamation has been overtaken by events. The 3rd Respondent's claim that the subject motor vehicle had been offered by the 2nd Respondent as security for a loan of Kshs. 1.3 million as such it was wrongly proclaimed hence the instant application was said to be an abuse of the court process.
12. This court after a perusal of the record finds that the Applicant herein being the first one to have proclaimed the subject motor vehicle takes precedence over the 3rd defendant as the alleged beneficial rights by the 3rd Respondent being that the subject motor vehicle had been offered as security by the 2nd Respondent had not been registered as such the vehicle in question remained available for proclamation by any party who had a valid decree.
13. The Applicant's application for stay, set aside and/or annul the warrant of attachment and/or Police Assistance dated 9th November, 2023 in Milimani Miscellaneous Application E1705 of 2023 by the 1st Respondent is found to be devoid of merit as the Applicant has already disposed the subject motor vehicle by way of a public auction as such to grant the orders sought would be in vain

Findings and Determination

14. For the forgoing reasons this Court finds the application to be devoid of merit and it is hereby dismissed. Each party to bear their own costs

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 11TH DAY OF JULY, 2025

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Otieno h/b Okeno For the Applicant

Moranga h/b Ondabu for the 3rd Respondent

N/A for the 1st Respondent

N/A for the 2nd Respondent

