



Odongo Investment Auctioneers v Gusii Water & Sanitation Company Ltd (Miscellaneous Application E27 of 2021) [2024] KEHC 1970 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS APPLICATION E27 OF 2021
TA ODERA, J
FEBRUARY 21, 2024**

BETWEEN

ODONGO INVESTMENT AUCTIONEERS APPLICANT

AND

GUSII WATER & SANITATION COMPANY LTD RESPONDENT

RULING

1. By a Notice of Motion dated 1st December 2023 and filed through the firm of O, M Otieno & Co. Advocates, the Applicant herein seeks the following orders: -
 - a. Spent.
 - b. That the Honourable Court be pleased to direct and/or order the Officer Commanding Station (o.c.s.) Kiogoro Police Station and/or Any Other Police Officer Stationed Where The Debtor's Proclaimed Property Are Located to offer and/or provide enough security to the Applicant in order to enforce the warrants of attachment and sale.
 - c. That in the event that the judgment debtor has persisted in presenting or blocking access to the premises where the proclaimed property is kept, the Applicant and the Police Officers be allowed to break in and gain entry should they be denied access by the Judgment Debtors/his agents to seize the proclaimed movable properties.
 - d. That the Honourable court be pleased to extend the warrant of attachment and sale for further 45 days in the event that the same has expired by the time of is entertained .
2. The grounds on the face of the application are that the Applicant was issued with Warrants of Attachment and Sale by the Court in Kisii H.C. Misc. Appl. No. 027 of 2021 on 27/07/2023. The Judgment Debtor has not challenged the execution process in any way and instead resorted to employ private security guard together with administration police to man the premises gate and locked the



proclaimed properties within her premises. The Applicant attempted to gain access to the Judgment Debtor's grounds on 08/08/2023 to execute the warrants but was blocked and/or locked out by the administration police officers attached to the gate. There was therefore need to have security from the OCS Kiogoro Police Station and/or any other police officers stationed where the proclaimed movable properties shall be found.

3. The Application is supported by an affidavit sworn by the Applicant on 15th August 2023. He deponed that he was issued with Warrants of Attachment and Sale in Kisii HC MISC Appl. No. 027 of 2021 on 27/07/2023. He proclaimed the Judgment Debtor's properties on 28/07/2023. The Judgment Debtor had not challenged the execution process and had not made good the decretal sum within the stipulated timelines. He proceeded to the Judgment Debtor's premises on 08/08/2023 and attempted to gain access to the Judgment Debtor's premises at Bobaracho Centre but he was denied access and/or locked out by the Administration Police Officers manning the gate. The Applicant deponed that proclamation would entail the physical removal of machineries and equipment's affixed therein. There was therefore need to get police assistance.

Determination

4. I have considered the Application herein.
5. Rule 9 of the [Auctioneers Rules](#), 1997 provides thus:
 1. Where an auctioneer has reasonable cause to believe that-
 - a. He may have to break the door of any premises where goods may be seized or repossessed; or
 - b. e may be subject to resistance or intimidation by the debtor or other person; or
 - c. a breach of the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property, the auctioneer shall request for police escort from the nearest police station in order to carry out his duties peacefully.
 2. An application under this rule shall be by motion by way of a miscellaneous application support by an affidavit and may be heard ex parte.
6. Rule 12 of the [Auctioneers' Rules](#), 1997 provides thus:
 1. Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock-
 - a. record the court warrant or letter of instruction in the register;
 - b. prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;
 - c. in writing, give to the owner of the goods seven days' notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;
 - d. on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction;



- e. ensure safe storage of the goods pending their auction;
 - f. arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter;
 - g. not remove any goods under the proclamation until the expiry of the grace period.
2. If on the expiry of the period of notice, the auctioneer finds that there are other goods belonging to the judgment-debtor-
 - a. which were not pointed out by the decree-holder and proclaimed earlier in his proclamation; or
 - b. which have been removed by the judgment-debtor; or cannot be found, the auctioneer shall file an application in court seeking leave of the court to be allowed to attach any other movable properties of the judgment-debtor pointed out by the decree-holder.
 3. An application under paragraph (2) shall be by motion by way of a miscellaneous application supported by an affidavit in a competent court, and in the case of distress for rent, repossession and attachment, may be heard ex parte.
 4. Where orders obtained by a judgment-debtor staying execution and served on an auctioneer are subsequently vacated, the auctioneer shall-
 - a. where the warrants of attachment and sale, or letter of instruction, are still valid, proceed with execution in compliance with these Rules;
 - b. where the warrants of attachment and sale have expired, apply for extension of the warrants for a period not exceeding forty-five days, within which he shall finalize execution;
 - c. where fresh warrants of attachment and sale or letter of instructions are issued with new figures, proceed in the manner provided in these Rules in respect of a fresh warrant.
7. I note that the Applicant has attached a Warrant of Attachment of Movable Property in Execution of Decree for Money dated 27th July 2023. The same shows that the decree was issued on 31st October 2022. The sum owing is KShs 120,020/= . The Applicant has also attached a Proclamation Notice dated 28/07/2023.
 8. I note that the Warrants of Sale of Property in Execution of Decree for Money dated 27th July 2023 expired on 27th September 2023. The Applicant wants security as he executes the warrants of attachment and for orders to attach any other movable property not listed in the proclamation served on 28th July 2023. The Proclamation Notice dated 28th July 2023 is with respect to the warrants dated 27th July 2023. He deponed that the respondent has made it difficult for him to execute the warrant and hence it expired before execution. I allow the prayer for extension of the warrant. The warrants are extended for 45 days.
 9. In the prayer for security, the applicant says that on 8.8.23 he visited the premises of the respondent at Bobaracho center where he found that she had deployed Administration Police Officers who prevented him from accessing the premises and hence this application. He now feels that to avoid breach of peace he needs security to execute the warrants.



10. The applicant swore a supporting affidavit dated 1.12.23 detailing the history of the matter and his failed attempts to access the premises of respondent. he annexed copies of his licence -OOO-1, warrants of attachment OOO-2 and proclamation OOO-3 In the end, it is clear from the foregoing that the respondent tried to intimidate the respondent with the Administration Police Officers, that there is likely to be a breach of peace if the applicant is not granted security which executing the warrant. It is thus clear that the applicant has met the threshold set in Rule 9 (1)(b) and (c) of the Auctioneers Rules 1997.
11. I proceed to allow the application as prayed.

DATED, DELIVERED AND SIGNED AT KISII THIS 21ST DAY OF FEBRUARY 2024.

T.A. ODERA

JUDGE

In the presence of:

Miss Opondo for the Applicant

Oigo - Court Assistant

