



Mayana Capital Limited v Mayana Capital Limited & another; Anfield Auctioneers (Interested Party) (Commercial Case 290 of 2018) [2024] KEHC 3741 (KLR) (Commercial and Tax) (12 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 290 OF 2018
MN MWANGI, J
APRIL 12, 2024**

BETWEEN

MAYANA CAPITAL LIMITED PLAINTIFF

AND

SHIRLEY NAILANTEI LENKOINA 1ST DEFENDANT

NAOMI TORIS LENKOINA 2ND DEFENDANT

AND

ANFIELD AUCTIONEERS INTERESTED PARTY

RULING

1. The defendants/applicants filed a Notice of Motion application dated 20th September, 2023 under the provisions of Sections 1A, 1B, 3A & 80 of the *Civil Procedure Act*, Order 22 Rule 22(1) & (2), Order 21 Rule 12(1) & (2), Order 40 Rule 1 & Order 45 Rule 1 of the Civil Procedure Rules, 2010 and all the enabling provisions of the law seeking the following orders: -
 - i. Spent;
 - ii. Spent;
 - iii. That pending the hearing and determination of the main suit, the Honourable Court be pleased to issue a temporary injunction restraining the respondent and the interested party, Anfield Auctioneers, whether by themselves, their agents, employees, servants or any person acting at their behest from seizing, moving, selling, disposing of, alienating, or in any manner



interfering with the properties of the applicants or enforcing the Proclamation Notice dated 19th September, 2023;

- iv. That in the alternative, in the event that the applicants' properties have been seized, alienated from the applicants' possession or advertised for sale, a mandatory injunction be issued compelling the respondents and their agents to return them to the applicants;
 - v. That the Honourable Court be pleased to give leave to the 1st defendant/applicant to continue liquidating the outstanding decretal balance of Kshs. 2,900,000 in monthly instalments to be paid from the date of the order until final settlement;
 - vi. That this Honourable Court be pleased to review the monthly instalments payable from Kshs.100,000/= to Kshs. 70,000/=;
 - vii. That the Honourable Court be pleased to restrain the plaintiff/respondent from levying execution as long as the 1st defendant/applicant pays the ordered monthly instalments;
 - viii. That the disputed Auctioneer's fees be subjected to taxation; and
 - ix. That costs of this application be awarded to the defendants/applicants.
2. The application is brought on the grounds on the face of the Motion and is supported by affidavits sworn by Shirley Nailantei Lenkoina, the 1st defendant, on 20th September, 2023, and Naomi Toris Lenkoina, the 2nd defendant on 1st December, 2023. In opposition thereto, the plaintiff filed a replying affidavit sworn on 11th October, 2023 sworn by Serah Wangu Muthee, the plaintiff's Director.
 3. The application herein was canvassed by way of written submissions. The defendants' submissions were filed by the law firm of Ndegwa Kiarie & Company Advocates on 8th December, 2023, whereas the plaintiff's submissions were filed on 15th December, 2023 by the law firm of Tito & Associates Advocates.
 4. Mr. M. Munga, learned Counsel for the defendants submitted that the items attached by the interested party belong to the 2nd defendant who is a sister to the 1st defendant, with the latter being the principal debtor. He stated that the 2nd defendant has always disputed guaranteeing the loan in question as can be seen from the amended defence and counter-claim dated 18th March, 2022. He further stated that it is only fair and just that the 2nd defendant be heard before execution is issued against her, since allowing the said execution to proceed would amount to breach of a fundamental principle of natural justice.
 5. To buttress the said argument, Counsel relied on the case of Onyango Oloo v Attorney General [1986-1989] EA 456 cited by the Court in Accounting Officer Kenya Ports Authority (Ex Parte) v Public Procurement Administrative Review Board & 3 others (Interested parties) [2019] eKLR. Counsel for the defendants referred to the provisions of Order 40 Rule 1 of the Civil Procedure Rules, 2010 and the Court of Appeal case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR and contended that the 2nd defendant would suffer irreparable harm if her properties were to be sold and her claims against the plaintiff end up succeeding.
 6. It was stated by Mr. M. Munga that the Court in its ruling dated 29th July, 2021 allowed the 1st defendant to liquidate the decretal sum of Kshs.4,000,000/= in monthly instalments of Kshs.100,000/=, which she has been doing and has even managed to reduce the decretal sum to Kshs.2,900,000/=. Counsel referred to the provisions of Order 21 Rule 12(2) of the Civil Procedure Rules, 2010 and asserted that this Court has the power to make an order postponing payment of the balance of the decretal sum until the remainder of the disputes between the parties herein are determined and/or to direct the 1st defendant to continue liquidating the decretal sum in instalments.



7. Counsel submitted that the 1st defendant's failure to pay some of her monthly instalments towards repayment of the decretal sum was due to the poor financial performance of her business, as the 1st defendant runs a tours and travel company which is her only source of income and for which this debt was contracted. He explained that the business being solely reliant on tourism is still reeling from the effects of the Covid-19 Pandemic.
8. He submitted that the 1st defendant has demonstrated through her conduct her commitment to clear the loan balance that is due and owing to the plaintiff and were it not to the liquidity challenges, she would not have defaulted in paying the instalments.
9. In submitting that the 1st defendant has demonstrated sufficient cause to warrant this Court to allow her to continue liquidating the loan balance in monthly instalments, he relied on the case of Freight Forwarders Ltd v Elsek & Elsek (K) Ltd [2012] eKLR.
10. Mr. M. Munga cited the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, 2010 and asked this Court to review the ruling dated 29th July, 2021 in view of the above information, by reducing the payable monthly instalments from Kshs.100,000/= to Kshs.70,000/=. To this end, he relied on the Court of Appeal case of Rose Kaiza v Angelo Mpanjuiza [2009] eKLR.
11. He submitted that the Auctioneer's fees of Kshs.399,248.00 are disputed as they are grossly exaggerated and not drawn to scale, thus they should be subjected to taxation.
12. Mr. Wanyonyi, learned Counsel for the plaintiff relied on the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR and submitted that contrary to the Court's orders issued on 29th July, 2021, the 1st defendant had defaulted in making monthly payments since the month of July 2022, thus on 26th September, 2023, this Court compelled the 1st defendant to make a payment of Kshs.200,000/= on or before 11th October, 2023 which she did.
13. Counsel stated that the plaintiff through the interested party has taken out execution proceedings against the defendants pursuant to the Court's ruling delivered on 29th July, 2021 to realize the outstanding decretal sum. He expressed the view that the injunctive orders sought herein should not be granted since the defendants have demonstrated lack of interest and willingness to settle the sum awarded to the plaintiff.
14. He contended that this Court should not be persuaded to grant leave to the defendants to continue liquidating the decretal sum in instalments since they have demonstrated that they do not have any intention of liquidating the decretal sum, and that they only approached this Court after the plaintiff instructed the interested party to realize the outstanding decretal amount.
15. Mr. Wanyonyi cited the case of Kamau James Gitutho & 3 others v Multiple ICD (K) Limited & another [2019] eKLR and stated that the instant application is an attempt to appeal against this Court's orders. Further, that the prayer to review the 1st defendant's monthly instalments from Kshs.100,000/= to Kshs.70,000/= does not meet the requisite conditions for appeal and/or review. He further stated that the defendants should not be allowed to use the COVID-19 Pandemic as a scapegoat for their default in making payments to the plaintiff since they disobeyed this Court's orders.
16. Mr. Wanyonyi referred to the provisions of Order 21 Rule 12(2) of the Civil Procedure Rules, 2010 and stated that it provides that the Court may only order the postponement of the decretal amount or payment in instalments without the consent of the decree holder for sufficient cause shown. He cited the case of Freight Forwarders Limited v Elsek & Elsek (K) Limited (supra) where the Court interpreted the meaning of "sufficient cause" on the part of the debtor and asserted that the defendants



in this instance, fail on all three fronts. Counsel contended that the defendants' proposition to pay the decretal sum by making monthly instalments of Kshs.70,000/= is manifestly unreasonable and would be antecedent to the conclusion of the main suit since it will take three and a half years for them to fully pay the balance of the decretal sum in issue.

17. He submitted that the plaintiff continues to suffer great injustice in light of the delay in payment of the sum of Kshs.2,903,000/= that is due and owing from the defendants. He stated that the interested party's fees were drawn to scale and the 1st defendant claims are baseless and only seek to delay the Court process.

ANALYSIS AND DETERMINATION.

18. I have considered the application herein, the grounds on the face of it and the affidavits filed in support thereof. I have also read the replying affidavit by the plaintiff together with the written submissions by Counsel for the parties. The issues that arise for determination are –
 - i. Whether an order of temporary injunction should issue;
 - ii. Whether the defendants should be granted leave to continue liquidating the decretal sums in instalments; and
 - iii. Whether the monthly instalments to be paid to the plaintiff by the defendants should be reviewed from Kshs.100,000/= to Kshs.70,000/=.
19. The 1st defendant in her affidavit in support of the instant application deposed that the Court in a decision dated 29th July, 2021 allowed her to offset the decretal sum of Kshs.4,000,000/= in monthly equal instalments of Kshs.100,000/=. She averred that she has been diligently making the said instalments thus reducing the decretal sum to Kshs.2,900,000/=.
20. She stated that she was unable to make some of her monthly instalments due to financial constraints but the plaintiff has refused to accommodate her, and it has now taken out execution proceedings against her. She further stated that the interested party on instructions of the plaintiff has through a Proclamation Notice dated 19th September, 2023 proceeded to attach and proclaim the 2nd defendant's properties and given her a seven days' notice.
21. The 1st defendant submitted that unless this Court urgently intervenes, the 2nd defendant's properties, who was the guarantor of the loan, are in danger of being sold, causing her and her family to unjustly suffer at the hands of the Auctioneers. She averred that the Auctioneer's fees being demanded are unjust and not drawn to scale, thus they should be subjected to taxation.
22. The 2nd defendant in her affidavit in support of the instant application deposed that against all rules of natural justice, at no point did the plaintiff inform her of the missing instalments or of the 1st defendant's non-compliance with the Court's directions.
23. She stated that at paragraph 23 of the amended statement of defence and counter-claim, she disputed her inclusion as a guarantor for the loan advanced to the 1st defendant by the plaintiff, and for that reason, she deserves her day in Court to be heard and defend herself. She averred that unless this Court intervenes, her properties are in danger of being unjustly sold.
24. Ms. Muthee, the deponent to the plaintiff's replying affidavit deposed that vide a ruling delivered on 29th July, 2021, this Court ordered the defendants to pay Kshs.4,000,000/= to the plaintiff by making an initial deposit of Kshs.200,000/ = on or before 10th August, 2021 and to be making subsequent monthly instalments of Kshs.100,000/ = until payment in full. She also stated that the Court further



ordered that in default of any of the instalments, the plaintiff shall be at liberty to execute the balance of the decretal sum.

25. Ms Muthee averred that the 1st defendant had defaulted in making monthly payments since July 2022 and has not been dutifully making payments as claimed, which means that the 1st defendant has been in persistent default for an inordinately long period of 1 year and 3 months. She stated that as a result, the plaintiff took out execution proceedings against the defendants to realize the balance of the decretal sum pursuant to the ruling dated 29th July, 2021.
26. Ms. Muthee contended that there has been no attempt or effort from the defendants to offset the amount owed to the plaintiff, hence it is not true that the 1st defendant has any intention of paying the plaintiff. She asserted that the instant application is an attempt to appeal against this Court's orders. She averred that this Court cannot purport to sit on appeal or review against the decisions and findings of a Court of concurrent jurisdiction.

Whether an order of temporary injunction should issue.

27. Temporary injunctions are provided for under Order 40 Rule 1 of the Civil Procedure Rules, 2010 which states as hereunder -

“Where in any suit it is proved by affidavit or otherwise-

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

28. The test for granting of an interlocutory injunction was considered by the Court in the case of *American Cyanamid Co. v Ethicom Limited* [1975] A AER 504 where the following three elements were noted to be of great importance:

- “(i) There must be a serious/fair issue to be tried;
- (ii) Damages are not an adequate remedy, and
- iii. The balance of convenience lies in favour of granting or refusing the application.”

29. What constitutes a prima facie case was defined by the Court of Appeal in the case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 others* (supra) as follows -

“So what is a prima facie case” I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability



of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

30. The defendants stated that the interested party acting on the plaintiff's instructions proclaimed and attached the 2nd defendant's personal items in a bid to execute the balance of the partial decretal sum being Kshs.2,900,000/=. They averred that this is despite the fact that the 2nd defendant has always disputed guaranteeing the loan which forms the subject matter of this suit, as can be seen from the amended defence and counter-claim dated 18th March, 2022. The defendants submitted that based on the said facts, they have established a prima facie case with high chances of success, and it is only fair and just for the 2nd defendant to be heard before execution is issued against her.
31. The plaintiff on the other hand submitted that vide a ruling delivered on 29th July, 2021, the Court directed the defendants to liquidate the partial decretal sum in issue by making monthly instalments of Kshs.100,000/= every month to the plaintiff, but the 1st defendant in contravention of the said order had defaulted in making monthly payments since the month of July 2022. The plaintiff further submitted that through the interested party, it took out execution proceedings against the defendants pursuant to the Court's ruling delivered on 29th July, 2021 to realize the outstanding decretal sum, and for the said reason, the injunctive orders sought herein should not be granted.
32. It is not disputed that on 12th February, 2020, the Court entered judgment on admission for the sum of Kshs.4,000,000/= in favour of the plaintiff as against the defendants. Subsequently, the plaintiff extracted a partial decree which was issued on 9th September, 2020 and thereafter sought leave of the Court to execute the said partial decree before taxation of costs vide a Notice of Motion application dated 17th September, 2020. Before the aforementioned application could be heard and determined, the defendants filed a Notice of Motion application dated 27th September, 2020 where they sought orders inter alia for the Court to postpone payment of the judgment sum issued on 12th February, 2020, and for leave to be granted to the 1st defendant to liquidate the judgment sum of Kshs.4,000,000/= in monthly instalments. The defendants also prayed for the plaintiff to be restrained from levying execution for as long as the 1st defendant pays the agreed monthly instalments.
33. In a ruling delivered on 29th July, 2021, the Court directed the 1st defendant to pay Kshs.200,000/= on or before 10th August, 2021, and for the balance of the partial judgment sum to be paid in equal monthly instalments of Kshs.100,000/= on or before the 10th day of each succeeding month until payment in full. The Court also ordered that in default of payment of any one instalment, the plaintiff shall be at liberty to execute for the balance of the decretal sum due as at that time.
34. It is not disputed that the 1st defendant defaulted in the payment of the said monthly instalments for a period of over one year thus the plaintiff instructed the interested party to proceed with execution proceedings for the balance of the decretal sum being approximately Kshs.2,900,000/=. The interested party has since proclaimed the 2nd defendant's goods and/or personal items vide a Proclamation Notice dated 19th September, 2023.
35. The defendants are seeking an order of injunction against the plaintiff and the interested party that they be restrained from enforcing the Proclamation Notice dated 19th September, 2023 on grounds that the items attached and/or proclaimed do not belong to the 1st defendant, as they belong to the 2nd defendant who contests ever consenting to guarantee the loan advanced to the 1st defendant by the plaintiff, which is also the subject matter of this suit. On perusal of the ruling delivered on 12th February, 2020, it is evident that judgment on admission was not only entered as against the 1st defendant, but against 2nd defendant as well. Further, the Court in its ruling dated 29th July, 2021 allowed the plaintiff



to execute for the balance of the decretal sum then due in the event the 1st defendant defaulted in payment of any of the instalments.

36. In view of the foregoing, it is my finding that the plaintiff was within its rights, when it instructed the interested party to begin execution proceedings against the defendants for the balance of the decretal sum since the defendants do not dispute that the 1st defendant defaulted in payment of her monthly instalments and the balance claimed by the plaintiff. The argument that the 2nd defendant did not guarantee the loan in question, thus her items should not be attached let alone proclaimed, is neither here nor there, since the judgment on admission entered on 12th February, 2020 was against both the defendants and has never been set aside, varied and/or reviewed. This means that the 2nd defendant's properties were at the risk of being attached by the plaintiff, in the event that the sum of Kshs. 4,000,000/= was not fully paid to the plaintiff.
37. I therefore find that the defendants have not established a prima facie case with chances of success to warrant this Court to grant them an order of injunction against the plaintiff and the interested party.
38. On whether the defendants will suffer irreparable harm and damage that cannot be compensated by an award of damages in the event the orders sought are not granted, this Court's considered view is that is not the case. To the contrary, the plaintiff stands to suffer damages in the event an order of injunction is issued since it has a valid judgment against the defendants in its favour which it will be kept away from and/or restrained from executing despite the fact that the defendants were allowed to liquidate it, by making monthly instalments but have failed to do so. In the result, I find that the balance of convenience tilts in favour of the plaintiff.

Whether the defendants should be granted leave to continue liquidating the decretal sums in instalments.

39. In a ruling delivered on 29th July, 2021, the Court allowed the 1st defendant to liquidate the balance of the partial decretal sum by paying the plaintiff equal monthly instalments of Kshs.100,000/= on or before the 10th day of each succeeding month until payment in full. The defendants submitted that the 1st defendant has been doing so and has even managed to reduce the decretal sum to Kshs.2,900,000/=. The plaintiff on the other hand submitted that this Court should not be persuaded to grant leave to the defendants to continue liquidating the decretal sum in instalments since they have demonstrated that they do not have any intention of liquidating the decretal sum, as they only approached this Court after the plaintiff instructed the interested party to realize the outstanding decretal amount. The plaintiff sees the instant application as an attempt to appeal against this Court's orders issued on 29th July, 2021.
40. The defendants' contention that this Court should grant them leave to continue liquidating the balance of the decretal sum by making monthly instalments to the plaintiff is based on their averment that they have demonstrated their willingness and commitment to clear the loan balance that is due and owing to the plaintiff. They submitted that the failure to make consistent monthly instalments of Kshs. 100,000/= every month to the plaintiff as earlier directed by the Court was occasioned by the poor financial performance of the 1st defendant's tours and travel business which was negatively affected by the Covid-19 Pandemic.
41. In order for this Court to allow the defendants to continue liquidating the balance of the decretal sum by making equal monthly instalments to the plaintiff, the defendants have to demonstrate their willingness and commitment to settle the outstanding balance of the decretal sum, noting that the plaintiff has a valid decree from this Court and is being kept away from the fruits of its judgment. It is not disputed that prior to the filing of this application, the defendants had defaulted in making the payments of the monthly instalments for a period of over one year.



42. The defendants have not demonstrated what efforts they took in informing the plaintiff of the challenges they were facing, financial or otherwise, that prevented them from consistently making the said payments. They have also not tendered any evidence in support of the allegation that they reached out to the plaintiff asking for accommodation in view of the financial challenges they were facing, as a result of the seasonal nature of the tours and travel business. Sections 107, 108 & 109 of the *Evidence Act*, Cap 80 of the Laws of Kenya provide that he who alleges must prove. This Court finds that the defendants have not discharged their burden of proving that they are willing and committed to settle the outstanding balance of the decretal sum.
43. It is also noteworthy that the defendants only approached this Court seeking for leave to continue liquidating the balance of the decretal sum by way of making equal monthly instalments to the plaintiff after the plaintiff instructed the interested party to institute execution proceedings, and the interested party proclaimed and attached properties and household items belonging to the 2nd defendant. No explanation has been offered by the defendants as to why they did not approach this Court sooner for the Court to review and/or adjust the amount of the monthly instalment payable to a sum that they could comfortably pay without defaulting. In view of the foregoing, I find that the defendants have not demonstrated good faith and intention to comply with the Court orders of 29th July, 2021.
44. Consequently, this Court is not persuaded that the defendants are deserving of an order for leave to continue liquidating the decretal sum in instalments.

Whether the monthly instalments to be paid to the plaintiff by the defendants should be reviewed from Kshs.100,000/= to Kshs.70,000/=.

45. Review is provided for under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, 2010 which state as hereunder –

“ 80. Review

Any person who considers himself aggrieved -

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

“Order 45 Rule 1

1. Any person considering himself aggrieved –

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree



was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

46. The defendants averred that their application for review is based on discovery of new and important matter or evidence, which after the exercise of due diligence, was not within their knowledge. They submitted that at the time this Court was issuing the order for monthly instalments to be paid at the rate of Kshs. 100,000/=, it would not have been possible for them to have knowledge of how long it would take the tourism sector to recover from the effects of the Covid-19 global Pandemic even upon exercise of due diligence. Further, that it is only after discovery and/or access of this information that the 1st defendant can be in a position to inform the Court on the amount that her business can pay without having the danger of defaulting and having this present situation happen again.
47. What constitutes new and important evidence was addressed by the Court in the case of Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR as follows-
- “For material to qualify to be new and important evidence or matter, it must be of such a nature that it could not have been discovered had the applicant exercised due diligence. It must be such evidence or material that was not available to the applicant or the court.”
48. From the above authority, it is clear that the defendants have to demonstrate that they could not be able to have knowledge of how long it would take the tourism sector to recover from the effects of the Covid-19 global Pandemic even after exercise of due diligence, and that the Court would have arrived at a different conclusion if it had the benefit of this information. In this case, the defendants sought for leave to liquidate the decretal sum by way of monthly instalments which application was allowed and the Court in its discretion set the monthly instalments at Kshs.100,000/=.
49. In view of the fact that determining the value of the monthly instalments was subject to the Court’s discretion, it is my considered view that information on how long it would take the tourism sector to recover from the effects of the Covid-19 Pandemic would not have impacted the amount of the monthly instalments that were set by the Court, in any manner. The defendants being duly indebted to the plaintiff have to find ways and/or means to settle the outstanding debt. It is not for the plaintiff to wait for the tours and travel business to generate sufficient money to settle the decretal sum, or for the plaintiff to keep accommodating them by reducing the monthly instalments each and every time the defendants allege financial difficulties.
50. This Court is alive to the competing interests between the plaintiff who has a valid decree in its favour and would want to enjoy the fruits of its judgment, and the defendants who seek accommodation by this Court for the second time. It is my finding that the defendants have not made out a case to warrant this Court to review the amount of the monthly instalments from Kshs.100,000/= to Kshs. 70,000/=.
51. In view of the fact that the Auctioneer’s fees is disputed, this Court finds that it is in the interest of justice for the said fees to be subjected to taxation.
52. In the end, I find that the application dated 20th September 2023 is partly merited. As a result, I make the following orders –
- i. The disputed Auctioneer’s fees shall be subjected to taxation; and



ii. Costs of the instant application shall be borne by the defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF APRIL, 2024.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Mwangi Munga for the defendants/applicants

Mr. Wanyonyi for the plaintiff/respondent

Ms B. Wokabi – Court Assistant.

