



Chaka Limited & 2 others v Wiskam Auctioneers & another (Miscellaneous Civil Application E672 of 2023) [2024] KEHC 6994 (KLR) (Civ) (12 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E672 OF 2023**

JN MULWA, J

JUNE 12, 2024

BETWEEN

CHAKA LIMITED 1ST APPLICANT

DAVID KIPRONO SUDI 2ND APPLICANT

EUNICE KIBULE SUDI 3RD APPLICANT

AND

WISKAM AUCTIONEERS 1ST RESPONDENT

JOGAN AUCTIONEERS 2ND RESPONDENT

RULING

1. The Applicants before this Court filed a Notice of Motion Application dated 16/8/2023 under Article 159(2)(d) of the *Constitution*, Sections 3,5, and 7 of the *Magistrates Courts Act*, Sections 1B,3,3A of the *Civil Procedure Act* and Order 21, 22, and 40 Rule 1 of the *Civil Procedure Rules*. They seek for an unnamed Interested Party to be restrained from auctioning Motor vehicles KBZ 055K and KAM 222V and an injunction restraining the OCPD Kilimani Division and Ngong Stations from impounding their motor vehicles pending the hearing and determination of the complaint before the Auctioneers licensing board.

The Application is supported by the grounds on its face and a supporting affidavit sworn by David Kiprono Sudi on 16/8/2023.

2. In opposing the Application, the Defendants filed a Replying Affidavit sworn on 23/10/2023 terming the Application as an afterthought and an attempt to obstruct the execution process.



3. The court has considered the application, the supporting and opposing affidavits as well as oral arguments by the parties advocates on 14/1/2023.

On 30/5/2017 eviction warrants in relation to LR No. 209/9749 were issued to the 1st Defendant against Grace Wairimu Sorora pursuant to the Judgment of the Environment and Land Court in ELC No.592/2010. Subsequently, the Defendant's bill of costs was filed and taxed and on 28/02/2023 a certificate of taxation was issued. The Respondents in recovering their costs attached the Applicants motor vehicles.

4. By an Application dated 20/4/2023 the Applicants sought leave for the firm of Ham and Hansley to come on record, and to file a reference before a Judge of the ELC, lifting of warrants of attachment, setting aside of the decree and release of the impounded motor vehicle. The application was dismissed by the court on 18/05/2023. The Applicants also initiated a complaint against the 2nd Defendant before the Auctioneers Board for charging a fee of Kshs. 250,000/= taking into account the balance of the decretal sum of Kshs. 1,770,000/=.
5. Before moving further, it is noted that this application arose from matters that were dealt with and finalized before the Environment and Land Court in whose docket it belongs. The Certificate of Taxation was issued by the Taxing master of the said court. Without further interrogation of the merits or otherwise of the application this court finds itself without jurisdiction to entertain the matter that is already resolved by the ELC. It is not only resjudicata but also incompetently filed in this court. The application is dismissed with costs to the Respondents.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE, 2024.

JANET MULWA

JUDGE

