



**Kensalt Limited & 2 others v Opingo & 6 others (Civil Case E003 of 2024) [2024] KEHC 15491 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15491 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CIVIL CASE E003 OF 2024  
A ONG'INJO, J  
DECEMBER 4, 2024**

**BETWEEN**

**KENSALT LIMITED & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS ..... APPELLANT**

**AND**

**CAROLINE OPINGO & 6 OTHERS & 6 OTHERS & 6 OTHERS & 6 OTHERS & 6 OTHERS ..... INTERESTED PARTY**

**RULING**

1. Vide the Application dated 6.7.2021 and filed on 7.7.2021 the Applicants sought for the following orders:-
  - a. That the Honourable Court be pleased to stay the lower court proceedings at Chief Magistrate's Court Migori, Civil suit No. E003 of 2020 Caroline Opingo & Another vs. Nile Hauliers Limited & 2 Others pending the hearing and determination of this application and/or until further orders of the Honourable Court
  - b. That the Honourable Court be pleased to stay the lower court suit/proceedings at Chief Magistrate's Court Migori, Civil Suit No. E003 of 2020 pending the hearing and determination of this suit and/or till further orders of the Honourable court.
  - c. That in the alternative an order be issued to have the Chief Magistrate's Court Migori, Civil Suit No. E003 of 2020, Caroline Opingo & Another vs. Nile Hauliers Limited & 2 others be transferred to the High Court at Kisumu and be heard together with this matter.
  - d. That the costs of this application be in cause.
2. Caroline Opingo, Felix Apollo Owuor T/A Victoria Blue Services in the Plaint in the Magistrates court sought that the court declares that the Motor Vehicle Registration KBS 874T was not sold and



transferred to 2<sup>nd</sup> Defendant – Kensalt Ltd as it had previously been sold under court process by Public Auction;

3. They also sought for declaration that the purported sale and transfer by 1<sup>st</sup> Defendant to 2<sup>nd</sup> Defendant is null and void and that the court should issue an order directing the 3<sup>rd</sup> Defendant to cancel the registration of 2<sup>nd</sup> Defendant as owner of motor vehicle registration KBS 874T.
4. That a Permanent injunction to issue restraining 1<sup>st</sup> and 2<sup>nd</sup> Defendants from interfering with ownership of motor vehicle in question
5. Cost of suit.
6. This Application was canvassed by way of written submissions. The Plaintiffs submission are dated 4.2/2022 and the Respondents submissions are dated 31.10.22
7. In HCC No. E003 of 2024 formerly Kisumu HCCC No. E004 of 2021 the Plaintiffs seek that the court declares that the auction purportedly conducted on 4.9.2019, and the sale of motor vehicles and tractors including KBS 874T Lorry Canter having been found on an illegality was one without basis, was conducted without following due procedure and the law and there being no judgment in place against the owners of the said tractors who are plaintiffs were null and void ab initio illegal and that no good title passed to the purchasers namely 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
8. They also seek an order that the tractors in prayer (b) having been seized without any court judgment/ Decree the purported auction on 4.9.2019 was a nullity, null and void and should be set aside to restore them to the plaintiffs.
9. The plaintiffs also sought that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants be declared jointly and severally liable to the plaintiffs for general damages and aggravated damages for losses and injuries caused by the unlawful seized and auctioning of private properties.
10. The Plaintiffs also sought for costs of the suit.
11. It is not in dispute that the motor vehicle registration number KBS 874T which is in dispute in Migori CMCC No. E003 of 2020 was allegedly sold in a Public Auction on 4.9.2019 and the Plaintiffs in HCCC No. E003 of 2024 (formerly Kisumu HCCC No. E004 OF 2021) are claiming that the auction was illegal and are asking the court to find the said auction to have been a nullity ab initio.
12. In consideration of the two conflicting claims in the High Court and the Subordinate Court this court finds that in the event it is established that the auction was illegal the proceedings in the lower court will be an exercise in futility.
13. In the circumstances this court issues an order for stay of the proceedings in the Magistrates court pending expeditious hearing and disposal of the proceedings / suit in the High Court.
14. Costs of the application to be in the cause.
15. Mention 30.1.2025 for Directions.

**DELIVERED DATED AND SIGNED AT MIGORI THIS 4<sup>TH</sup> DAY OF DECEMBER, 2024.**

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**A. ONG'INJO**

**JUDGE**

Judgment delivered in the presence of



Victor/Lola Court Assistant

Mr. Mwangi Advocate holding brief Mr. Ingutia Advocate for Plaintiff/Applicant

Mr. Kerario Marwa Advocate for 2<sup>nd</sup> and 5<sup>th</sup> Defendant – No appearance for Mr. Kisia Advocate

