



**Josvir Traders & Agencies Limited v Kiruni & 2 others; Wambu t/
a Chador Auctioneers (Respondent) (Environment and Land Case
174 of 2018) [2025] KEELC 6484 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6484 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 174 OF 2018
JM ONYANGO, J
SEPTEMBER 29, 2025**

BETWEEN

JOSVIR TRADERS & AGENCIES LIMITED PLAINTIFF

AND

GEOFFREY CHEGE KIRUNI 1ST DEFENDANT

LUCY WAMAITHA CHEGE 2ND DEFENDANT

EVERTON COAL ENTERPRISES LIMITED 3RD DEFENDANT

AND

ELIUD CHAI WAMBU T/A CHADOR AUCTIONEERS RESPONDENT

RULING

1. The Applicant herein filed a Notice of Motion Application dated 21st February 2025 seeking the following Orders:
 1. Spent...
 2. That Mr. Eliud Chai Wambu practicing at Chador Auctioneers be ordered to forthwith release to the Decree Holder a sum of Ksh. 6,000,000 (Six Million) that he has collected from the Judgment Debtor in Execution of the Decree in this Cause and withheld.
 3. That this Honourable Court do make such other or alternative Orders as will meet the interest of justice.
 4. That Mr. Eliud Chai Wambu be condemned to pay costs of this Application.



2. The Application is anchored on the grounds set out in the Notice of Motion and the supporting affidavit of Stephen Njuguna Ng'anga sworn on even date.
3. The Applicant contends that the Respondent practicing as Chador Auctioneers has in the course of executing a Decree vide warrants of attachment dated 1st October 2024 and 15th October 2024, wrongfully withheld the sum of Kshs. 6,000,000/- which was collected from the Judgment Debtor.
4. The Respondent met the application with vehement opposition through the Replying Affidavit of one Eliud Chai deponed on 24th March 2025.
5. The Respondent concedes that the execution had commenced and partial satisfaction of the decree had been received.
6. He further asserts that he deducted the auctioneer's fees, which in his estimation, was proportionate to the work done in the process of attachment of the goods and property.
7. The Respondent denies any impropriety, brands the application a sham and an abuse of the court process and prays for its dismissal with costs.
8. The Respondent contends that the present application has been brought in bad faith, pointing out that the same complainant has already lodged a parallel complaint before the Auctioneers Licensing Board in Disciplinary Cause No. 7 of 2025 raising substantially similar allegations.

Background

9. Before considering the merits of the rival contentions, it is necessary to set forth the circumstances under which this dispute has arisen.
10. The 1st and 2nd Defendants being Judgment Debtors, were by decrees of this Honourable Court dated 9th February 2023 and 23rd September 2024, ordered to pay to the Applicant/ Decree Holder Kshs. 332,376,697.85/- and Kshs. 8,313,663/- respectively.
11. The Decree Holder instructed Chador Auctioneers, the Respondent herein, to execute the decrees on their behalf. The Respondent, acting upon the instructions of the Decree Holder successfully recovered a sum of Kshs. 38,000,000/- from the Judgment Debtor.
12. Thereafter, an Order of stay of execution was granted by the Court of Appeal on 8th January 2025 and the Judgment Debtor was ordered to pay charges incurred in respect to the intended sale within 30 days.
13. After the stay order was issued by the Court of Appeal, the Respondent remitted Kshs. 32,000,000/- to the Decree holder and retained Kshs. 6,000,000/- claiming the same as auctioneer's fees for the work done.
14. It is the deduction of the auctioneer's fee from the recovered monies that has stirred the Applicant's grievance thus necessitating the instant application.

Issues

15. Having carefully perused the application, the Replying affidavit in opposition thereto and the parties' respective submissions, the controversy narrows itself to a single pivotal question:

Whether the Applicant is properly before this Court in seeking the release of funds allegedly withheld as auctioneer's fees



Analysis and Determination

16. Before examining the substance of the parties' contentions, it is necessary to situate the issue within its true legal context.
17. The Applicant contends that funds have been wrongfully withheld, yet the law has deliberately ordained a specific channel for such grievances.
18. The question, therefore, is whether the Applicant has approached this Court in a manner consistent with the procedural requirements of the law, or whether the challenge must first be presented through the established course.
19. It is within this tension between grievance and procedure that the present analysis must find its bearings.
20. As noted above, the Respondent herein, being an auctioneer was instructed by the Applicant/ Decree Holder to execute decrees on their behalf.
21. An auctioneer is, in essence, an officer of the Court, acting as the agent of the Decree-Holder, yet bound by the authority of the Court itself, and charged with the solemn duty of enforcing its decrees through execution. See *Sitienei & another v Lang'at t/a Kaloto Auctioneers* [2023] KEELRC 2815 (KLR).
22. In *Sitienei* (supra) the court addressed the duty of an auctioneer in the following terms:

“An auctioneer’s foremost duty and obligation is fidelity to the law and to at all times act in accordance with the law and lawful directions from the court. Where a court issues orders that are contradictory or invalid an auctioneer has a legal duty and indeed an obligation to seek clarification from the court. It is not justifiable for an auctioneer to blindly act on instructions from the judgment-creditor or his lawyer even in case of ambiguous, blurred, or unclear circumstances...”
23. Essentially, in moments of uncertainty, the auctioneer must remember that their allegiance is first to the Court and to the law, for to yield unquestioningly to the will of a party is to abdicate the impartial role entrusted to him.
24. In the instant application, it is not in dispute that the Respondent received a sum of Ksh. 38,000,000/- as part payment of the decretal sum, a fact expressly conceded in paragraph 11 of the Respondent’s Replying Affidavit.
25. The crux of the matter is whether the Ksh. 6,000,000/- retained by the Respondent as auctioneer’s fees was appropriate or whether such retention was irregular.
26. Rule 7 of the Auctioneer’s Rules, 1997 provides:

“A debtor shall pay the charges of the auctioneer unless—

 - (a) that debtor cannot be found; or
 - (b) he has no goods upon which execution can be levied; or
 - (c) the sale proceeds are insufficient to cover the charges, in which case the creditor shall pay the charges or the deficiency thereof.”



27. Rule 19 imposes upon an auctioneer the duty to maintain a clients' account into which all monies received on behalf of clients must be deposited without delay, and from which only fees properly chargeable under the Rules may be deducted.
28. Where a dispute arises as to the quantum of such fees, Rule 55 provides that the matter must be assessed by the Registrar, Magistrate, or the Board, rather than permitting unilateral retention. The provision states:
 - (2). "Where a dispute arises as to the amount of fees payable to an auctioneer;
 - (a) In proceedings before the High Court; or
 - (b) Where the value of the property attached or repossessed would bring any proceedings in connection with it within the monetary jurisdiction of the High Court, a Registrar, as defined in the Civil Procedure Rules (Cap 21, Sub. Leg.), may on the application of any party to the dispute assess the fee payable.
 - (4). An appeal from a decision of a Registrar or a Magistrate or Board under sub rules (2) and (3) shall be to a judge in chambers.
 - (5). The Memorandum of Appeal, by way of chamber summons setting out the grounds of the appeal, shall be filed within 7 days of the decision of the Registrar or Magistrate."
29. The abovementioned provisions enshrine both the procedural and fiduciary obligations of the auctioneer, emphasizing that his role is one of strict accountability to the law, the Court, and the parties whose rights he is entrusted to protect.
30. Counsel for the applicant contends that the decree holder bears no obligation to satisfy the auctioneers fees. It is their contention that in *Geoffrey Chege Kirundi & Lucy Wamaita Chege v Josvir Traders & Agencies Ltd* [2023] eKLR the Court of Appeal while granting the stay of execution ordered the judgment debtors to, "pay all charges incurred in respect of the advertised intended sale within 30 days."
31. Learned counsel for the Applicant submits in light of the Court of Appeal's ruling, the Respondent herein has no lawful or justifiable basis to continue retaining the sum of Ksh. 6,000,000/- which was realized in the cause of execution.
32. Conversely, learned counsel for the Respondent submits that no evidence has been adduced to prove that the amount retained as auctioneer's fees was fraudulent or unlawful.
33. In counsel's view, the proper course for challenging such deductions is not through an application for release of funds but through taxation of the Auctioneers Bill of Costs as provided for under Rule 55 of the Auctioneers Rules.
34. Counsel for the Respondent further contends that the Applicant has already lodged a complaint before the Auctioneers Licensing Board and thus alleges that the instant application is nothing more than forum shopping by the Applicant, a maneuver designed less to vindicate a legal right than to multiply proceedings in search of a favorable outcome.
35. As I have already observed hereinabove, Rule 55 prescribes the proper channel for resolving disputes over auctioneers' fees, vesting the duty of assessment in the Registrar, a Magistrate, or the Board.
36. Rule 55 is not an empty formality but a deliberate safeguard, designed to ensure that such disputes are resolved within the structure ordained by law.



37. In *Autoports Freight Terminals Limited v Opar t/a Skypac Consult Auctioneers* [2025] KEHC 1683 (KLR) while addressing Rule 55 of the Auctioneers Rules the court stated:
- “It is evident from the above provisions that the first point of recourse for a dispute regarding the fees payable to an auctioneer is either the Auctioneer’s Board or a taxing master, both of whom are tasked with assessing the fees owed. Such an assessment must adhere to the prescribed rules governing the remuneration of licensed auctioneers as detailed in the Fourth Schedule of the Auctioneers Rules, 2022.”
38. Accordingly, to permit this Court to circumvent that process by entertaining an application for the direct release of funds would be to unsettle the balance struck by the Rules themselves by substituting the said procedure with judicial intervention.
39. Yet, this must not be mistaken to absolve the auctioneer from the fiduciary obligation imposed by Rule 19, which demands that all client monies be safeguarded in a separate account, with deductions made only in the manner and measure permitted by law.
40. It therefore follows that while the Applicant may understandably decry the deductions as oppressive or excessive, the law has spoken with clarity as to the remedy.
41. The grievance must find its redress not through collateral applications, but through the orderly mechanism of taxation or assessment envisaged in Rule 55.
42. At the same time, the Respondent auctioneer cannot take comfort in this procedural shield as though it were a license to self-help. Rule 19 stands as a solemn command that client funds be held inviolate in a designated account, subject only to those deductions sanctioned by the Rules.
43. Thus, even as the forum for contesting fees is firmly circumscribed, the fiduciary standard governing their custody remains exacting and uncompromising.
44. In the end, the law is not blind to grievance, but it is insistent upon order. Rule 55 of the Auctioneers Rules prescribes with unmistakable clarity that any contest over fees levied by an auctioneer must be resolved by way of taxation of the Bill of Costs.
45. The Applicant, however well-intentioned, has sought relief in a forum that the law does not permit.
46. Additionally, it does not escape this Court’s attention that the grievance now pressed is, in substance, already the subject of inquiry before the Auctioneers Licensing Board in Disciplinary Cause No. 7 of 2025, where the same Applicant has set in motion disciplinary proceedings against the Respondent on indistinguishable allegations.
47. This dual pursuit of redress, one before the specialized tribunal and another before this Court, cannot be countenanced.
48. The doctrine of exhaustion, whose pedigree is long established, rests upon the simple but unyielding proposition that the general rule is where Parliament has ordained a specific procedure for ventilating grievances, that course must be pursued to its logical end before the doors of the Court are knocked upon.



49. As was observed by the Court of Appeal in *Speaker of the National Assembly v Karume* [1992] KLR 21:

“where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”

50. This principle was later given robust reaffirmation in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others* [2020] eKLR, where a five-judge bench held that the exhaustion doctrine ensures that parties are diligent in availing themselves of statutory remedies, reserving the Court as the forum of last resort rather than the first port of call.

51. To permit concurrent proceedings before both the Licensing Board and this Court on the same issue is to invite disorder, to multiply litigation, and to reduce justice into a game of chance. Such duplicity offends not only judicial order but also the constitutional scheme which esteems specialized mechanisms of dispute resolution.

52. The upshot is that the application before this Court cannot be sustained. It is hereby dismissed with no order as to costs, without prejudice to the Applicant’s right to seek redress in the proper forum as provided under Rule 55 of the Auctioneers Rules.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29TH DAY OF SEPTEMBER 2025

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J. M. ONYANGO

JUDGE

In the presence of:

Mr Wambugu for the Auctioneer

Miss Maina for mr Mbigi for the Applicant

Court Assistant: Hinga

