



REPUBLIC OF KENYA



In re Hezron Getuma Onsongo t/a Hegeons Auctioneers (Miscellaneous Civil Application E150 of 2023) [2025] KEHC 13443 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E150 OF 2023**

RN NYAKUNDI, J

SEPTEMBER 29, 2025

**IN THE MATTER OF ATTACHMENT ASSORTED OFFICE COMPUTERS,
ASSORTED OFFICE CHAIRS, ASSORTED OFFICE CABINETS, ASSORTED
PHOTOCOPIES MACHINES AND ANY OTHER MOVABLE PROPERTY OF
JUDGMENT DEBTOR**

**IN THE MATTER OF THE AUCTIONEERS ACT
IN THE MATTER OF APPLICATION FOR PROVISION OF SECURITY**

RULING

1. Before this court is an application dated 16th day of April 2025 seeking the following orders:
 - a. Spent
 - b. That an order do issue to the Applicant to attach the said properties and any other movable properties from The Monarch Insurance Co.ltd.
 - c. That the Officer Commanding Station (O.C.S) Nairobi Central Police Station or any Sub County Police Commander (SCPC) be directed to provide security during the attachment of the properties from The Monarch Insurance Co.ltd.
2. Which application is supported by the annexed affidavit of Hezron Getuma Onsongo T/Hegeons Auctioneers on the following ground; -
 - a. The Applicant herein T/A Hegeons Auctioneer on the 21st day of January 2025 received warrant of attachment and sale from the High Court at Eldoret
 - b. That the Applicant proclaimed the Monarch Insurance Co. Ltd on 6th day of February 2025.
 - c. The Respondent the Monarch Insurance Co. Ltd and/or his agents,



- d. representatives, servants and assignees have not paid the decretal sum, and Auctioneers costs to date.
 - e. That the said proclamation and intended attachment was challenged or stayed in a court and the application was dismissed.
 - f. The Applicant may get resistance, intimidation and harassment by the debtor The Monarch Insurance Co. Ltd and/or his agents, representatives, servants and assignees during the attachment from their premises where the said proclaimed properties are kept.
 - g. It would be in the interest of justice and in accordance with the law that the orders sought be granted
 - h. The honorable court has powers to issue the order sought herein
3. The application is supported by an annexed affidavit sworn by the Applicant stating as follows;
1. That I am a male adult of sound mind and disposition, working for gain as a Licensed Auctioneer in the name and style of Hegeons Auctioneer, competent to make and swear this affidavit
 2. That I verily know that I received warrants of attachment and sale from the High Court on 21st day of January 2025 to proclaim The Monarch Insurance Co. Ltd for non-payment of decretal sum. I hereto annexed and marked "HGO-1" is a copy of the said warrants of attachment and sale.
 3. That I proclaimed the said The Monarch Insurance Co. Ltd on 6th day of February 2025. I hereto annexed a copy of the proclamation marked, "HGO-2".
 4. That I verily know that after the foresaid proclamation the debtor The Monarch Insurance Co. Ltd and/or his agents, representative, servants and assignees have not paid decretal sum owed to Kamau Lagat & Co. Advocates and Auctioneers costs to date.
 5. That I verily know that I will find resistance, intimidation and harassment by the debtor The Monarch Insurance Co. Ltd and/or his agents, representatives, servants and assignees during the attachment of the proclaimed items from the premises where the said properties and kept.
 6. That I pray that an order for providing security be issued to enable me attach the proclaimed goods from The Monarch Insurance Co. Ltd
 7. That I further pray that the (O.C.S) Nairobi central Police Station or any Sub County Police Commander (SCPC) be directed to provide security during the exercise of attaching the said properties and from The Monarch Insurance Co. Ltd and/or his agents, representatives, servants and assignees.
 8. That I pray that my application be allowed as prayed
4. The Respondent laid ground in opposing the application by the Applicant in the averments highlighted in his replying affidavit hereinunder:
1. That I am a Legal Officer at the Respondent company, duly authorized and competent to swear this affidavit on its behalf, and well versed with the facts and circumstances of this matter.
 2. That I have read and understood the contents of the Applicant's Application dated 16th April 2025, together with the annexed documents, and wish to respond as follows:



3. That the Applicant's application is devoid of merit, premature, and wholly unnecessary in the circumstances.
4. That the Respondent has at all material times expressed its willingness to settle the outstanding amount, and indeed has made payment towards settlement. (Marked and annexed hereto as "GM-1" is a copy of the cheque issued dated 27th February 2025.)
5. That in view of the above, the instant application is not only misplaced but also amounts to an abuse of the court process, considering the Respondent's strict compliance with the agreed settlement terms.
6. That the orders now sought by the Applicant amount to approbating and reprobating-seeking to use the court as both a sword and a shield and should not be entertained by this Honorable Court.
7. That I respectfully urge this Honorable Court to take notice of the Respondent's good faith settlement efforts and decline to grant any adverse or punitive orders as sought in the present application.
8. That the Respondent stands to suffer undue prejudice and reputational harm should the orders sought herein be granted, despite its demonstrated willingness to resolve the matter amicably.
9. That I swear this affidavit in further opposition to the Applicant's application and pray that the same be dismissed with costs.

Decision

5. The basis of the application in question seeks an order to issue an attachment under Section 3, 3A, 63 (e) and 98 of the Criminal Procedure Act and Order 21 Rule 71 of the Civil Procedure Rules and Section 9(1) and (2) of the Auctioneers Rule as amended by Legal Notice No. 44. The [Civil Procedure Act](#) and Rules 2010 provides a framework on execution and enforcement of judgments. The significant provisions being Order 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 29 of the Civil Procedure Rules. For purposes of this application the applicable Rule is Order 44 which reads as follows:
 1. Where a decree has been passed against a firm, execution may be granted-
 - a. Against any property of the partnership
 - b. Against any person who has appeared in his own name under Rules 6 or 7 of Order 30 or who has admitted on the pleadings, that he is, or who has been adjudged to be, a partner; or
 - c. Against any person other than an infant who has been individually served as a partner with the summons and has failed to appear
6. In simple terms, "execution" refers to the act of putting the Court's decree or judgment into effect by requiring the judgement debtor to follow the directives in the decree or order and allowing the decree holder to retrieve the item that was awarded to him by the decree. In execution proceedings a party who files the suit will be anxious as to how his suit will be determined. A party who obtains a decree is certain about the relief he got. But however, he will be uncertain as to when he could realize the fruits of the decree obtained by him. He has to sweat for enforcement.



7. The modes of execution of decree under the *Civil Procedure Act* and Rules are as follows:
 - a. By delivery of any property specifically decreed
 - b. By attachment and sale or by sale without attachment of any property
 - c. By arrest and detention in prison
 - d. By appointing a receiver
 - e. In such other manner as the nature of the relief granted may require
8. In the comparative dicta espoused in the case of *Topanmal Chhotamal v. Kundomal Gangaram*, AIR 1960 SC 388 the Court held as follows:

“It is a well-settled principle that a Court executing a decree cannot go behind the decree: it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit. The whole purpose of execution proceedings is to enforce the verdict of the Court. Executing Court while executing the decree is only concerned with the execution part of it but nothing else. The Court has to take the judgment in its face value. It is settled law that executing Court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the Court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing Court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing Court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree.”

9. The question for consideration is whether the intended Applicant has acknowledged that the Respondent on 27th February 2025 issued a cheque of 234,000/= in the name of Nyachiro Nyagaka & Co. Advocates formed part of the decretal sum of subject matter of this litigation. The *Civil Procedure Act* defines a decree to constitute the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final. It may partly be preliminary and partly final. The Court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading up to the passing of an order. The circumstances under which an order had been made would also be relevant.
10. From this definition there is no doubt that the Court cannot go behind or beyond the decree which is the subject matter of execution and enforcement of the judgment. What the replying affidavit has done is to disapproved the validity of the decree and to show no continued default or failure of the Respondent to comply with the judgment of the Court from which the decree is obtained as a source of an order to attach the assets as a mode of settlement. The application dated 16th April 2025 therefore fails for want of merit.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 29TH SEPTEMBER 2025

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R. NYAKUNDI

JUDGE



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