



Bomet Water & Sanitation Company v Langat (Suing as the legal representative of Walter Cheruiyot Langat) & another (Civil Appeal E044 of 2023) [2025] KEHC 15182 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E044 OF 2023
JK NG'ARNG'AR, J
OCTOBER 28, 2025**

BETWEEN

BOMET WATER & SANITATION COMPANY APPLICANT

AND

SHARON CHELANGAT LANGAT (SUING AS THE LEGAL REPRESENTATIVE OF WALTER CHERUIYOT LANGAT) 1ST RESPONDENT

LAKE VICTORIA SOUTH WATER SERVICES BOARD 2ND RESPONDENT

RULING

1. In this matter, there were two pending Applications i.e. the Notice of Motion Application dated 9th July 2025 and the Notice of Motion Application dated 21st July 2025. The former sought among others, an order for stay of execution of the Decree dated 14th February 2025 in which the Applicant was the Judgement debtor. After going through the pleadings, I have noted that the Decree had already been executed when the Applicant's motor vehicles were sold via public auction on 21st July 2025. This meant that the referenced Application had been overtaken by events and thus had no merit. It is accordingly dismissed. The latter Application is what this court will determine.
2. In the Notice of Motion Application dated 21st July 2025, the Applicant sought the following orders: -
 - I. Spent.
 - II. Spent.
 - III. Spent.
 - IV. Spent.



- V. THAT this Honourable Court invoke its inherent powers to do justice and avoid hardship to the parties, give orders of stay of the advertisement, sale, set aside and/or lift, declare null and void the purported sale by public auction of motor vehicles registration numbers KCG 573Z and KCG 574Z and the transfer of motor vehicles registration numbers KCG 573Z and KCG 574Z.
- VI. Spent.
- VII. THAT the warrants of attachment and sale issued on 16th July 2025 in favour of the 1st Respondent to Nahashon Kerati Muriri t/a Muriri Auctioneers in respect of motor vehicles registration numbers KCG 573Z and KCG 574Z be lifted and/or vacated.
- VIII. THAT the 1st Respondent and Nahashon Kerati Muriri t/a Muriri Auctioneers by themselves, officers, employees, agents, servants and/or any other person whatsoever be restrained from effecting any change of ownership over motor vehicles registration numbers KCG 573Z and KCG 574Z within the records of NTSA.
- IX. THAT the 1st Respondent and Nahashon Kerati Muriri t/a Muriri Auctioneers by themselves, officers, employees, agents, servants and/or any other person whatsoever be ordered to immediately return motor vehicles registration numbers KCG 573Z and KCG 574Z into the custody of the Applicant and be restrained from interfering with the possession.
- X. THAT this Honourable court give any further orders as the justice of the case may require.
3. The Application was brought under sections 3A, 75, 78 and 79G of the Civil Procedure Act, Order 21, Orders 22 Rule 6 of the Civil Procedure Rules and Rule 12 (c), 12 (f) and 16 (a), (b) and (c) of the Auctioneers Rules, 1997. The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Kipngetch Towett sworn on 21st July 2025.

The Applicant's case.

4. The Applicant stated that while its Application dated 9th July 2025 was pending for issuance of directions on 21st July 2025, the Deputy Registrar of this court signed and issued Warrants of Sale on 16th July 2025. That on 21st July 2025, this matter was called in court and the 1st Respondent's counsel stated that motor vehicles registration numbers KCG 573Z and KCG 574Z had been sold through public auction. The Applicant further stated that the purported sale of the two vehicles was illegal.
5. It was the Applicant's case that the 1st Respondent illegally and erroneously attached its motor vehicles. That she had not issued any proclamation thereby leading to the likelihood of the Applicant suffering irreparable loss and prejudice. It was the Applicant's further case that the Auctioneer should be directed to reverse the illegal sale of motor vehicles registration numbers KCG 573Z and KCG 574Z.
6. In its written submissions dated 4th August 2025, the Applicant submitted that the execution of the Decree ought to be done by the lower court. That the 1st Respondent ought to apply for the transfer of the Decree to the lower court so that the lower court does not execute a Decree from the High Court. It relied on section 31 of the Civil Procedure Act and Order 22 Rule 4 of the Civil Procedure Act.
7. It was the Applicant's submission that the public auction did not conform to the law. That the inventory contained in the Warrants of Attachment were not signed by the Applicant but were signed by an employee of the 1st Respondent's counsel contrary to the provisions of Rule 12 (1) (b) of the Auctioneer's Rules. It was the Applicant's further submission that the Auctioneer did not indicate the value of the motor vehicles and their conditions contrary to Rule 12 (2) (b) of the Auctioneer's Rules.



8. The Applicant submitted that the Auctioneer failed to give it 7 days' notice in writing to redeem the subject motor vehicles contrary to Rule 12 (1) (c) (g) of the Auctioneers Rules. That the Auctioneer attached the subject motor vehicles on 17th July 2025 and sold them on 21st July 2025.
9. It was the Applicant's submission that the Auctioneer failed to give evidence that he gave adequate notice to prospective bidders through radio, television announcement, handbills, posters or other forms of communication. That the Notification of Sale did not conform to the law and the sale conducted on 21st July 2025 could not be valid. It relied on Rules 12 (1) (b) (g), 16 (1) and 16 (2) of the Auctioneer's Rules.
10. The Applicant submitted that it was an entity owned by the County Government of Bomet and was exempted from normal execution proceedings. It relied on section 21 (5) of the [Government Proceedings Act](#), *Gatheo Kibuchi vs Kirinyaga County Council* (2015) eKLR and *Republic vs County Secretary, Nairobi City County & another Ex Parte Wachira Nderitu Ngugi & Co. Advocates* (2016) eKLR. The Applicant further submitted that the execution proceedings offended Order 29 Rule 2 and 3 of the Civil Procedure Rules which stated that no order may be made against the Government under Orders 22 and 23 of the Civil Procedure Rules. It further relied on *Kennedy Wainaina Njenga vs County Government of Nairobi & Co-operative Bank of Kenya (garnishee)* (2019) eKLR et.al.
11. It was the Applicant's submission that even though it was a limited liability company, the provisions of the [Government Proceedings Act](#) applied to it and any execution proceedings ought to be against its accounting officer.

Response

12. The 1st Respondent filed a Replying Affidavit dated 24th July 2025 and stated that the Application was defective and an abuse of the court process. The 1st Respondent further stated that the Applicant's motor vehicles were sold through public auction on 21st July 2025 and she received the proceeds of the sale. That the Decree was partially settled and had instructed her advocate to apply for another Warrant of Attachment for her to realize the balance owed to her.
13. It was the 1st Respondent's case that the Applicant had not made any proposal to fully settle the Decree. That Decrees are not made in vain and must be respected.
14. The Auctioneer, Nahashon Kerati Muriri filed a Replying Affidavit dated 23rd July 2025 and stated that he received Warrants of Attachment on 16th June 2025. That he did his investigations and determined all the properties owned by the Applicant including its motor vehicles. The Auctioneer further stated that he collected the Warrants of Attachment, prepared the Proclamation and proceeded to the Applicant's premises along Kipchamba street.
15. It was the Auctioneer's case that he found the Applicant's Managing Director and upon perusing the documents, the Managing Director taunted them that the listed items in the Proclamation were owned by the County Government of Bomet. That he attached motor vehicles registration number KCG 573Z and KCG 574Z on 7th July 2025. It was the Auctioneer's further case that while attaching and towing the said motor vehicles, the Applicant's Managing Director observed all the happenings and followed the motor vehicles to the storage facility.
16. The Auctioneer stated that after attaching the motor vehicles, they issued a Notification of Sale to the person manning the Applicant's facility. That they applied and were issued Warrants of Sale on 16th July 2025, which was a month after the receipt of the Warrants of Attachment. The Auctioneer further stated that they advertised for the sale of the motor vehicles on 17th July 2025 and sold them via public



auction on 21st July 2025. That after deducting their fees, they sent the proceeds of the sale to their instructing advocate.

17. It was the Auctioneer's case that despite being aware of the entire process, the Applicant did not attempt to redeem the attached properties. That the properties were sold in a public auction to third parties who bought good titles and the same should be transferred to them. It was the Auctioneer's further case that they followed the due process and the Application was misplaced.
18. In her written submissions filed on 24th July 2025, the 1st Respondent submitted that the Applicant was a corporate body duly incorporated under the Companies Act and the Applicant had annexed its Certificate of Incorporation and CR-12 from the Registrar of Companies. That in *Salomon vs Salomon & Company Ltd (1895-95) ALL ER Rep 33*, the court stated that a company was a distinct legal entity. The 1st Respondent further submitted that once a company became incorporated, it became a separate legal entity with its own rights and liabilities from its owners. That even though the Applicant was owned by the County Government of Bomet, it was not the County Government of Bomet. She relied on section 70 and 77 of the Water Act on how the Applicant was formed and how it exercises its powers and liabilities independently from its owners.
19. It was the 1st Respondent's submission that section 21 (1) of the Government Proceedings Act did not talk about companies owned by the Government. She relied on *Greenstar Systems Limited vs Kenyatta International Convention Centre (KICC) & 2 others (2018) eKLR* and *Kimoi Ruto & another vs Samwel Kipkosgei Keitany & another (2014) eKLR*. It was the 1st Respondent's further submission that the present Application was meant to deny her the fruits of her Judgement.
20. I have gone through the court record, the Notice of Motion Application dated 21st July 2025, the 1st Respondent's Replying Affidavit dated 24th July 2025, the Auctioneer's Replying Affidavit dated 23rd July 2025, the Applicants' written submissions dated 4th August 2025 and the 1st Respondent's written submissions filed on 24th July 2025. I have sieved two issues for my determination: -
 - i. Whether the Applicant was subject to normal execution proceedings
 - ii. Whether the auction process was valid.

i. Whether the Applicant was subject to normal execution proceedings

21. The Applicant stated that it was exempt from normal execution proceedings as it was part of the County Government of Bomet. That any execution proceedings against it ought to follow the provisions of the Government Proceedings Act. On the other hand, the 1st Respondent stated that the Applicant was a company with a separate legal entity that was capable of suing or being sued and that they were subject to normal execution proceedings.
22. From the pleadings, I have noted that the Applicant attached a its Certificate of Incorporation dated 18th June 2013 and its CR-12 which indicated that the County Government of Bomet owned 99,997 shares in the company. It is important to state that companies are body corporates with separate legal identities. I concur with several decisions among them in *Mbugua v Kamuyu [2025] KEHC 9261 (KLR)*, the court held: -

“.....It is trite law that a limited liability company is a separate legal entity capable of suing or being sued.....”

While dealing with a similar scenario, the court in the case of *SNK vs MSK & 5 others [2015] eKLR* had this to say;



'The learned counsel did not give due regard to the settled principle of company law in Salomon vs Salomon (1897) AC that a company is a separate legal person from its share and directors'.

At paragraph [23] the court went further to state that orders against a company can only be brought against accompany under section 211 or 222(2) of the Companies Act.....”

23. In Kolaba Enterprises Ltd v Shamsudin Hussein Varvani & Another (2014) eKLR the court observed: -

“It should be appreciated that the separate corporate personality is the best legal innovation ever in company law. See the famous case of Salomon & Co Ltd v Salomon [1897] A.C. 22 H.L that a company is a different person altogether from its subscribers and directors. Although it is a fiction of the law, it still is as important for all purposes and intents in any proceedings where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities”

24. Further, in Ikon Prints Media Company Limited v Kenya National Highways Authority & 2 others [2015] KEHC 1517 (KLR), the court held: -

“Foremost though, it is important to point out that it would not be tenable to invoke the Government Proceedings Act (Cap 40) as a bar to any execution herein. The 1st Respondent is a body corporate with perpetual succession and a common seal. It is a corporate entity capable of subsisting independently. It is dependent on Government funding but it is not government or servant of or agent of Government for the purposes of the Government Proceeding Act. The 1st Respondent is an independent judicial person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1st Respondent are not judgments against the government but against an independent juridical body.”

25. From the above, it is clear that the Applicant was legally distinct from the County Government of Bomet. The Applicant was a body corporate capable of suing or being sued. In this matter, the Judgement Debtor was the Applicant and not the County Government of Bomet. It is therefore my finding that the Applicant was not subject to the execution proceedings as provided by the Government Proceedings Act but was subject to the normal execution proceedings.

ii. Whether the auction process was valid

26. From the onset, it is important to state that contrary to the Applicant’s submission, this court has the jurisdiction to conduct execution proceedings. Article 165 (3) (a) of the Constitution of Kenya empowers the High Court with unlimited original jurisdiction in criminal and civil matters.

27. Further, Order 22 Rule 6 of the Civil Procedure Rules provides: -

Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A:

Provided that, where judgment in default of appearance or defence has been entered against a defendant, no execution by payment, attachment or eviction shall issue unless not less than ten days’



notice of the entry of judgment has been given to him either at his address for service or served on him personally, and a copy of that notice shall be filed with the first application for execution.

28. Regarding the impugned execution process, it is salient to note that Judgement in the Applicant's Appeal dated 28th August 2023 was delivered by this court on 25th September 2024 where the award was reduced from Kshs 3,984,512/= to Kshs 2,320,000/=. It was an undisputed fact that this was the amount that the Applicant ought to pay the 1st Respondent and it was also an undisputed fact that this amount was still owing prior to the public auction conducted on 21st July 2025.
29. Rule 12 (1) of the Auctioneers Rules provides: -
- Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—
- (a) record the court warrant or letter of instruction in the register;
 - (b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory, the auctioneer shall sign a certificate to that effect;
 - (c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;
 - (d) on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction;
 - (e) ensure safe storage of the goods pending their auction;
 - (f) arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter;
 - (g) not remove any goods under the proclamation until the expiry of the grace period.
30. From the record, I have noted that the Auctioneer received the Warrants of Attachment on 16th June 2025. The Auctioneer prepared a Proclamation form dated 17th June 2023. The Auctioneer filed an Affidavit of Service dated 21st July 2025 stating that on 17th June 2025, he served the Applicant with the Warrants of Attachment and Proclamation form. As per Rule 12 (1) (b) of the Auctioneers Rules, the Proclamation form ought to indicate the value of specific items and the condition of each item and such inventory be signed by the owner of the goods (Applicant) or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory, the auctioneer shall sign a certificate to that effect.
31. I have looked at the Proclamation form dated 17th June 2023 and I have noted that the form included the list of the Applicant's motor vehicles with their respective conditions and values. However, the form was not signed by the Applicant but was witnessed by one, Isaiah Kiplangat.
32. As a whole, it is my finding that this misstep could be explained by the Applicant's employees refusing to receive the Warrants of Attachment and Proclamation from the Auctioneer. This was stated in the Auctioneer's Affidavit of Service dated 21st July 2025 where he stated that the Applicant's employees



taunted them that everything in their office belonged to the County Government of Bomet and they could not receive the Warrants of Attachment and Proclamation.

33. The Proclamation stated that the Applicant had 7 days to redeem the decretal amount after which in the event of the Applicant's failure to redeem, the vehicles would be moved to the Auctioneer's yard and be sold via public auction. The Proclamation was very categorical that the 7-day window expired on 23rd June 2025.
34. The Auctioneer stated that he attached the Applicant's motor vehicles registration numbers KCG 573G and KCG 574Z on 7th July 2025. That upon attaching the subject motor vehicles, he issued a Notification of Sale and served the Applicant. I have looked at the Notification of Sale and the same was dated 7th July 2025. The Notification of Sale indicated the registration numbers of the subject motor vehicles, their conditions and their respective values. The Notification of Sale also stated that the two motor vehicles would be sold after a newspaper publication.
35. I have noted that the Auctioneer received warrants of sale on 16th July 2025 and placed an advertisement in the newspaper on 17th July 2025. In terms of the advertisement, the Auctioneer partly complied with the provisions of Rule 12 (1) (f) of the Auctioneers Rules which provided that an advertisement be done within 7 days of the removal of the goods and sell the said vehicles not earlier than 7 days after the advertisement. The placing of the advertisement in the newspaper complied with the timelines contained in Rule 12 (1) (f) of the Auctioneers Rules.
36. The only breach I have noted was the timelines within which the sale was conducted. The sale ought to have been conducted after the expiry of 7 days from 16th July 2025. In the instant case, the sale was conducted before the expiry of the seven days. Having considered the proceedings as whole, I find that the Applicant became aware of the execution proceedings on 16th June 2025 when they were served with the Warrants of Attachment. The Applicant even tried to secure an order to stay the execution of the Decree. It is also important to state that there has been no effort by the Applicant to satisfy the Decree.
37. In my view, the 1st Respondent had every right to commence execution proceedings against the Applicant. It is my finding that in the interest and scales of justice, substantive justice outweighed procedural flaws. Article 159 (2) (d) of *the Constitution* of Kenya provides: -
Justice shall be administered without undue regard to procedural technicalities.
38. In the final analysis, it is my finding that the Auctioneer's breach in the final step of execution could not invalidate the 1st Respondent's right to enjoy the fruits of her Judgement. The Auctioneer's misstep is cured by Article 159 (2) (d) of *the Constitution* of Kenya. This is also against the backdrop of indolence of the Applicant to settle the Decree which was within their knowledge for a longer period of time.
39. In the end, I make the following orders: -
 - I. The Notice of Motion Application dated 21st July 2025 has no merit and is dismissed.
 - II. The motor vehicles registration numbers KCG 573Z and KCG 574Z be released from Bomet Police Station into the 1st Respondent's custody.
 - III. An order is hereby issued to the Officer Commanding Station, Bomet Police Station to provide enough security to the 1st Respondent during the collection of the motor vehicles.
 - IV. Each party to bear its own costs in this Application.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF OCTOBER, 2025.



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J.K.NG'ARNG'AR

JUDGE

Ruling delivered in the presence of;

Siele and Susan (Court Assistants)

No Appearance for the Appellant

Kadet for the Respondent

