

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
MISC APPL E706 OF 2025

[Coram: Gikonyo]]

**BUSINESS PARTNERS INTERNATIONAL
KENYA (II)
LIMITED.....
.....APPLICANT**

AND

**DENNIS K. MWANGI T/A KENYA SHIELD
AUCTIONEERS.....
.....AUCTIONEER**

VERSUS

**SPHINX PHARMACEUTICALS
LIMITED.....1ST RESPONDENT
BERNARD ONKUNDI OTUNDO.....2ND
RESPONDENT**

RULING

1. The applicant filed the notice of motion dated 26th June 2025, under rule 9 (A-C of the Auctioneers Act 1997, seeking: -

**(b) THAT a breaking-in order be issued to
Dennis K. Mwangi T/A Kenya Shield
Auctioneers and/or the successful buyer of**

the auction conducted on 28th May 2025 against the Respondents, allowing the Auctioneer and/or the buyer to break in and gain access into the premises known as Land Reference No. 12610/44, Athi River Town, Mavoko Municipality, Machakos County for the purposes of conducting an inspection to facilitate the completion of the auction sale and recover the outstanding loan arrears and costs for recovery as provided under the Auctioneers Act.

(c) THAT the Officer in charge of Athi River Police Station provide police assistance and supervise the execution of this order or any of his officers above the rank of Assistant Inspector under his command to maintain law and order.

2. The application is premised on the grounds set forth in its body and the supporting affidavit sworn by the auctioneer, **Dennis K. Mwangi**.
3. The grounds are: -

(1) The 2nd respondent is the registered owner of the property known as **Land Reference No. 12610/44, Athi River Town, Mavoko Municipality, Machakos County**, which secures two loan facilities advanced to the 1st respondent.

(2) The 1st respondent is indebted to the applicant in respect of two loan facilities amounting to *Kenya Shillings Eighty-Five Million, Three Hundred and Ninety-Nine Thousand, Nine Hundred and Fifty-Eight and Fifty-Six Cents* (Kshs. 85,399,958.56) and *Kenya Shillings One Hundred and Thirty Million, Two Hundred and Sixty Thousand, One Hundred and Sixty and Sixty-Nine Cents* (Kshs. 130,260,160.69), totalling *Kenya Shillings Two Hundred and Fifteen Million, Six Hundred and Sixty Thousand, One Hundred and Nineteen and Twenty-*

Five Cents (Kshs. 215,660,119.25) as of 7th May 2025.

(3) The 2nd respondent is the 1st respondent's guarantor in both loan facilities.

(4) Owing to the 1st respondent's persistent default, the applicant, in exercise of its statutory power of sale, instructed its duly appointed auctioneer to arrange for the auction of the charged premises, which was successfully conducted on 28th May 2025.

(5) Following the auction, the successful buyer has been unable to complete the payment due to the respondents' continued and unlawful obstruction, denying the buyer access to the charged premises for inspection, which is necessary to finalize the sale.

- (6) The respondents' obstruction has prevented the buyer from assessing the current state and occupation of the charged premises, thereby frustrating the completion of the auction process and delaying the applicant's recovery of the outstanding debt.
- (7) There is no order in place vitiating the whole process of statutory sale by public auction, nor have the respondents filed any case in challenge of the same.
- (8) The applicant has suffered and continues to suffer economic losses as a result of the 1st respondent's failure to repay the debt and the respondents' obstruction of the auction process, and it is in the interest of justice that the respondents be compelled to allow access for inspection or immediately pay the outstanding amount.

(9) Unless the respondents are compelled to allow access to the premises for inspection by the buyer or to pay the outstanding debt amount, the applicant will suffer irreparable harm and loss, as the completion of the auction sale is critical to meeting the applicant's financial obligations.

(10) The debt amounts due and owing continues to rise above the value of the charged premises, and with the respondents having no other known assets, it will become harder for the applicant to recover their monies unlawfully withheld by the respondents.

(11) It is just, fair, and equitable that this application be allowed to protect the applicant from further loss and inconvenience caused by the respondents' breach of contract and obstruction of the auction process.

4. Despite service, there was no response filed by the respondents.

Analysis and Determination

5. The issue before the court is whether the application is merited.

6. Rule 9 of the Auctioneer's Rules

provides that: -

"9. Police assistance

(1)Where an auctioneer has reasonable cause to believe that—

(a)he may have to break the door of any premises where goods may be seized or repossessed; or

(b)he may be subject to resistance or intimidation by the debtor or other person; or

(c)a breach of the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property, the auctioneer shall request for police escort from the nearest police station in order to carry out his duties peacefully.

(2) An application under this rule shall be by motion by way of a miscellaneous application supported by an affidavit and may be heard ex parte.”

7. The auctioneer exhibited a copy of the title in respect of Land Reference No. 12610/44, Athi River Town, Mavoko Municipality, Machakos County.
8. The auctioneer also exhibited instructions dated 12th October 2022 and a 45-day redemption notice issued to the respondents on 13th October 2022 notifying them of the applicant's intention to exercise statutory power of sale.
9. The auctioneer further exhibited copies of advertisements for the sale of the charged premises by public auction published in the Daily Nation and Standard newspapers.
10. The auctioneer exhibited a copy of an email dated 1st May 2025 from the applicant instructing him to issue a 14-day

notice to the respondents as well as the notice that he issued on 7th May 2025.

11. The auctioneer averred that the public auction in respect of the subject property was successfully conducted on 28th May 2025. That however, the respondents' obstruction has prevented the buyer from assessing the current state and occupation of the charged premises, thereby frustrating the completion of the auction process and delaying the applicant's recovery of the outstanding debt.

12. There was no opposition to the application by the respondents despite service.

13. From the material presented before the court, the debtor's actions are intended to thwart the chargee from realizing the security towards payment of the loan. A court of law shall never countenance obstructive acts by a defaulter to stand on

the way of recovery of the debt. Accordingly, the court finds that it is in the interests of justice to grant the orders sought.

Disposal

14. In the upshot, the application dated 26th June 2025 is allowed in terms of prayers (b) and (c).

(1) THAT a breaking-in order is hereby issued to Dennis K. Mwangi T/A Kenya Shield Auctioneers and/or the successful buyer of the auction conducted on 28th May 2025 against the Respondents, allowing the Auctioneer and/or the buyer to break in and gain access into the premises known as Land Reference No. 12610/44, Athi River Town, Mavoko Municipality, Machakos County for the purposes of conducting an inspection to facilitate the completion of the auction sale and recover the outstanding loan arrears and costs for recovery as provided under the Auctioneers Act.

(2) THAT the Officer in charge of Athi River Police Station to provide police assistance and supervise the execution of this order or any of his officers above the rank of Assistant Inspector under his command to maintain law and order.

15. No orders as to costs.

**Dated, signed and delivered through
Microsoft Teams online application this
23rd day of October, 2025**

F. Gikonyo M

Judge

In the presence of:

**No appearance by parties, Mr. Otwal
having been present when date was
taken.**

CA Kinyua