



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CIVIL APPEAL NO.20 OF 2022

JOHN MAINA MWANGI.....
APPLICANT

=VERSUS=

CHARITY NJERI GACHURU.....
.....RESPONDENT

RULING

1. By Notice of Motion dated 27th March, 2025, brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules, Sections 3A and 63(e) of the Civil Procedure Act the Applicant seeks the following orders:-

a) Spent.

***b) THAT this Honourable court be pleased to renew
the stay of execution orders granted on 18th
January, 2023.***

c) THAT the Honourable Court be pleased to issue injunctive orders against the Appellant/Respondent from disposing by public auction and/or private treaty all those moveable properties belonging to the Respondent attached on 19th March 2025 from his residential property within Utawala, Queenspark Estate, House No. Q11 Nairobi County pending the hearing and determination of this application inter partes.

d) THAT the Honourable court be pleased to set aside the attachment actioned on 19th March 2025 by Mayfair Auctioneers in satisfaction of the decree in Milimani CMCC 1334 of 2021.

e) THAT the Honourable court be pleased to issue directions on the expeditious management of the Appeal herein.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of **John Maina Mwangi** sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that on 19th March 2025, the Respondent dispatched Mayfair Auctioneers to satisfy the decree in **MCC No.1334 of 2021 (Charity Njeri Gachuru vs John Maina Mwangi)** without proper notices to the Appellant. He further averred that the auctioneers instructed by the Respondents failed to observe the legal requirement of effecting a proclamation before attachment and before breaking into the Appellant's residence and carrying away household goods.
4. The Appellant is apprehensive that the goods will be sold in accordance with the notification of sale and render the appeal an academic exercise.

THE RESPONDENT'S CASE

5. The Respondent opposed the application through a replying affidavit sworn on 28th November 2024 by Muturi Kamande, Advocate. He averred that the order of stay of execution granted to the Applicant on 18th January 2023 lapsed after he failed to comply with the conditions. He argued that since there were no stay orders in place, M/S Mayfair Auctioneers

proceeded to sell the attached goods on 29th March 2025. In light of the foregoing, the Respondent argued that the application was overtaken by events.

6. The application was canvassed by way of written submissions. The Respondent filed its submissions, which I have duly considered.
7. As at the time of writing this ruling, the Appellant had not filed his submissions as directed.

ANALYSIS AND DETERMINATION

8. Having considered the application, the respective affidavits and the submissions by the Respondent, the only issue for determination is whether the Applicant is entitled to the orders sought.
9. The Appellant is seeking to renew the stay orders granted on 18th January 2023. The orders were granted in **MCC No.1334 of 2021 (Charity Njeri Gachuru v John Maina Mwangi)** on the following conditions:-

- i. That he would file the record of appeal within the next 120 days.***

ii. That he was to deposit a bank guarantee for the decretal sum.

iii. costs within the next 30 days.

10. The Appellant failed to comply with the conditions, following which the order of stay automatically lapsed.
11. In its ruling delivered on 27th February 2025, the court extended the time within which the Applicant was to comply with the order dated 18/1/2023 for a further 14 days from the date of the ruling. In default, the stay of execution shall automatically lapse.
12. The instant application was filed on 1st April 2025. The matter came up for hearing on 2nd April 2025, and interim orders were granted in terms of prayer No.2 of the application. According to the Auction Report dated 16th April 2025, the Applicants goods were auctioned for Kshs 169,800/= on 29th March 2025. It is clear that the instant application was filed after the Applicant's goods had been auctioned. Based on the foregoing, it is the finding of this court that the temporary relief sought by the Appellant is overtaken by events. The stay order having lapsed, there is nothing for this court to renew.
13. The upshot of the foregoing is that the application dated 27th March 2025 is devoid of merit and the same is hereby dismissed. Each party to bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 31ST DAY OF OCTOBER, 2025.

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:-

Kuria for the Applicant

Muturi Kamande for the Respondent

Ahmed - Court assistant

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