

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
HCCA NO. E049 OF 2021

BLISS GVS HEALTH CARE LTD.....

APPELLANT/RESPONDENT

VERSUS

CONSOLATA HOSPITAL MATHARI.....1ST

RESPONDENT

AUTO GALLERY (MOMBASA) LTD..... 2ND

RESPONDENT/APPLICANT

CHARDOR AUCTIONEERS 3RD

RESPONDENT

RULING

1. By the ruling of this court dated 12.6.2025, the court directed the Applicant to file an affidavit demonstrating the payable storage charges.
2. The Applicant filed the Affidavit and Further Affidavit respectively sworn by Vijay Mehta on 2.7.2025 and 10.7.2025 by which it was deposed as doth:

(a) Appellant/Respondent's motor vehicle registration No. KCQ 116K was brought to the 2nd

Respondent/Applicant's yard on 17th March, 2022 as per the warrant of attachment issued by this honourable court.

- (b) On 20th June, 2024 this Honourable Court delivered judgment whereby it was held that the 2nd Respondent's/Applicant's storage charges must be paid by the Appellant/Respondent.
- (c) Upon payment of the security costs of Kshs. 600,000/= to the court by the Appellant/Respondent as ordered by this honourable court on 31st October, 2024.
- (d) The 2nd Respondent/Applicant released the Appellant's/Respondent's motor vehicle registration number KCQ 116K on 11th November, 2024.
- (e) The Auctioneers Act under the fourth schedule enumerates on how much should be charged as storage fees per day and the same must be Kshs. 500/= per day.
- (f) The Appellant's/Respondent's motor vehicle registration number KCQ 116K was brought to the 2nd Respondent's/Applicant's yard on 17th March, 2022 and released on 11th November, 2024, therefore, it stayed at the yard for a period of nine hundred and seventy one (971) days.
- (g) Therefore, the storage charges owed was calculated as follows;

Storage charges - 971 days x 500 Ksh = 485,500/=.

Handling fees - Kshs. 1,500/=

VAT - Kshs. 77,920/=

Total - Kshs. 564,920/=

(h) The Applicant prayed that the security amount already deposited in court be released to the 2nd Respondent/Applicant, the same being the storage costs of Kshs. 564,920/= plus costs of pursuing the same in court.

3. The Applicant also filed submissions dated 9.7.2025 by which it submitted in material that storage charges was Ksh. 500/= per day and the number of days was 971. The storage fees was thus submitted as follows:

Storage charges - 971 days x 500 Ksh = 485,500/=

Handling fees - Kshs. 1,500/=

VAT - Kshs. 77,920/=

Total - Kshs. 564,920/=

4. There is no direct challenge on the storage fees projected by the Applicant. As a matter of fact, the Respondent did not file any affidavit in relation to storage fees. From the Case Tracking System, it appears that the Respondent filed what he termed as a further affidavit. It is sworn by one Rufus Maina on 4.7.2025.

5. There are also submissions of the same date. The further affidavit and submissions both relate and refer to an application dated 19.9.2024 to which the Respondent is

opposed and pray that the said application should be dismissed with costs. Nothing was stated of the storage costs as directed by the court on 12.6.2025. I therefore deem that the affidavit by the Applicant on storage fees in not opposed.

Analysis

6. The position of the Applicant is that the storage charges per day is at Ksh. 500/= and the motor vehicle was stored for 971 days. The Applicant had the duty to prove how the charges claimed arose. As was held in **Patrick Otieno Nyapanda v Autozone Motors (K) Limited [2021] eKLR:**

The award for storage charges, for all intents and purposes, comprises special damages which should not only be pleaded but must be proven. In this case, the Respondent only claimed that after repossession of the vehicles, they were kept in a yard at a cost of Kshs. 1,000/= per vehicle per day as storage charges. The Respondent has neither given the name of the said yard nor provided any receipts to prove that indeed it was being charged the said Kshs.1,000/= per day per motor vehicle for storage.

7. There is no dispute that the Applicant was entitled to the fees. The Auctioneers Rules (Revised, 2022) on payment of auctioneer's charges state as follows under Section 7.

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 cases the creditor shall pay the charges or the deficiency thereof.

8. The court has also perused the said Auctioneer's Rules (Revised 2122) under Part II on Auctioneer's Storage Charges. The same provides that the storage charges shall be 0.25% of the value of the property subject to Ksh. 500/= per day.
9. It was therefore the case of the Applicant that the security amount already deposited in court be released to the 2nd Respondent/Applicant, the same being the storage costs of Kshs. 564,920/= plus costs of pursuing the same in court.
10. The Respondent had the duty to demonstrate the manner in which the amount proposed by the Applicant was excessive or unjust. This was not done. Yet I have to determine whether the amount is proper. The Applicant pleaded 971 as the total number of days and Ksh. 500/= as daily storage charges. The order for release was made on 20.6.2024. The period between 20.6.2024 and 11.11.2024, the vehicle ought not to have been in custody. It does not in any way affect the parties herein. A period of 144 days is thus discounted.
11. The period of 971 is discounted by 144 days, leaving 827 days. The rest of the charges are not payable as the dispute relates only to one item, that is, storage charges. Storage charges are thus 827 x 500/= getting a sum of Ksh. 413,000/=. I find no basis to allow the 971 days. The court is not taxing

an auctioneer's bill of costs but dealing with determination of storage charges.

12. VAT of Ksh. 77,920/= was also charged. In the case of **Kenneth Kiplagat t/a Kiplagat & Associates v National Housing Corporation [2005] e KLR**, it was held that VAT is a statutory requirement governed by Cap. 476 VAT Act and that VAT is charged on the supply of taxable goods or services made or provided in Kenya.

13. Section 9(3) of the VAT Act provides thus:

In calculating the value of any services for the purposes of Subsection (1) there shall be included any incidental costs incurred by the supplier of the services in the course of making his supply to his client provided that, if the commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.

14. Based on the above, I note that the bulk of the amount of Ksh. 564,920/= raised by the Auctioneer herein constituted storage fees and not professional fees. VAT was not as such applicable as this was a disbursement to a third party as agent. I disallow the claim for VAT. The reasonable amount owed to the Applicant is Ksh. 413,000/=, which I award. The above is fortified by the holding of Aburili J in **Ngatia &**

Associates Advocates v Interactive Gaming & Lotteries Limited [2017] KEHC 2789 (KLR) as follows:

107. VAT is a tax levy on advocates in respect of the professional fees they charge for legal services they render to their clients. It is a charge payable to the Kenya Revenue Authority and the advocate is only but a statutory agent for KRA. The levy once collected by the advocate for the legal services rendered is then remitted on a monthly basis to KRA.

108. Disbursements not being fees but refund of money spent in the preparation and actual representation of the client should not be subjected to VAT (see **Makumbi & Another v Sale Electric (U) Ltd [190-1994] EA 306 (SC)**).

109. I totally agree with the above legal position and add that the taxing officer was expected to allow VAT to all the professional fees which included instructions fees and all other items except those items where actual money like court filing fees, photocopies etc were expended by the advocate for which he was seeking in his bill of costs, a reimbursement.

15. Costs follow the event and lie at the discretion of the court. The Applicant submitted the amount of Ksh. 35,080/=. However, there has been a discount of more than one quarter of the amount claimed. In effect the respondent was justified in resisting the bill.

16. Consequently, the court has to exercise discretion. The best order in the circumstances is that each party to bear their own costs.

17. The second question is interest. The amount was already deposited in court, thus will not attract interest. Consequently, the amount deposited shall be released to the parties as follows:

- a. The applicant shall receive through their advocates, a sum of Ksh. 413,000/=.
- b. The balance be paid to the respondent through their advocates.

Determination

18. The upshot of the foregoing is that I make the following orders: -

- a) The Applicant/Auctioneers is entitled to Ksh. 413,000/= as storage fees in relation to this matter.
- b) Each party to bear their own costs.
- c) The security amount of Ksh. 600,000/= deposited in court be released to the parties as follows:

- (i) Applicant/Auctioneer - a sum of Ksh. 413,000/= only through their advocates.

(ii) The balance shall be paid to the respondent, Bliss
GVS Healthcare Limited, through their advocates.

d) There shall be no interest on the said amounts.

e) The file is closed.

**DELIVERED, DATED and SIGNED at NYERI on this 13th day
of November, 2025.** Ruling delivered through Microsoft Teams
Online Platform.

KIZITO MAGARE
JUDGE

Represented by: -

Mr. Ombiro for the 2nd Respondent/Applicant

Robi Jaleba for Kuria for the Appellant/Respondent

Court Assistant - Michael