



**Don Bosco Utume Theological College v Kenya Private Universities Workers Union;  
High.Ceass Auctioneers (Interested Party) (Employment and Labour Relations  
Cause 1347 of 2018) [2025] KEELRC 3113 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3113 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1347 OF 2018  
HS WASILWA, J  
NOVEMBER 5, 2025**

**BETWEEN**

**DON BOSCO UTUME THEOLOGICAL COLLEGE ..... APPLICANT**

**AND**

**KENYA PRIVATE UNIVERSITIES WORKERS UNION ..... RESPONDENT**

**AND**

**HIGH.CEASS AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. The Applicant/Judgment Debtor filed a Notice of Motion dated 23<sup>rd</sup> June 2025 seeking orders that: -
  1. Spent
  2. pending the hearing and final determination of this application interpartes, an interim injunction do issue restraining the Respondents and/or their agents or whosoever from attaching, selling by way of public auction or in any other way interfering with the proclaimed goods as per the proclamation notice dated 18<sup>th</sup> June 2025 issued by the interested party.
  3. pending the hearing and final determination of this application interpartes, an interim injunction do issue restraining the Respondents and/or their agents or whosoever from executing the Warrants of Attachment issued on 16<sup>th</sup> June 2025 as the amounts claimed therein are extremely exaggerated and by far exceeds the amount due to the Respondents. The Respondent did not disclose that the Applicant had already paid Ksh. 116,505 before the Warrants were issued.
  4. this Honourable court be pleased to set aside the Warrants of attachment issued on 16/6/2025 as the same are based on an inaccurate amount and declare the proclamation notice dated



18/6/2025 irregular, illegal and invalid for violating express provisions of the Auctioneers Rules 1997.

5. costs of this application be borne by the Respondent.

### **Applicant/Judgment Debtor's Case**

2. The Applicant avers that this Court issued the warrants of attachment herein on 16<sup>th</sup> June 2025, however, as per proclamation notice, the Respondent instructed the Auctioneers on 14<sup>th</sup> June 2025. The instructions were therefore a nullity and cannot form the basis of the proclamation as they were issued before the Court granted the Warrants of Attachment.
3. It is the Applicant's case that the proclamation offends express provisions of the Auctioneers Rules 1997 in that it does not indicate the specific goods proclaimed, it does not indicate the value of the specific items and the condition of each item and does not state who signed or refused to sign the inventory as per rule 12(1)(b) of the *Auctioneers Act*, 1997.
4. The Applicant avers that decretal amount being claimed by the Respondent by far exceeds the sum awarded by the Court in its judgment, the interest therein is also backdated to 2018 yet the amount did not accrue at once since the remittances were to be done on a monthly basis and the Respondent did not disclose that the Applicant had already paid Ksh. 116,505 before the warrants were issued.
5. The Applicant avers that unless the interim orders of injunction are issued as prayed, the Applicant stands to suffer irreparable harm as the proclaimed goods risk being sold at a throw away price since there is neither valuation nor a reserve price indicated in the proclamation.
6. It is the Applicant's case that the proclaimed goods are tools of trade central to our operations as a school; and attaching them will collapse teaching and learning operations in the institution.
7. The Applicant avers that the Respondents will suffer no harm if this application is granted since they can always sell the goods later if the Court rules in their favour. This is so noting that the Applicant had already started defraying the decretal sum long before the warrants of attachment were issued.

### **Respondent/Decree Holder's Case**

8. In response to the Application, the Respondent/Decree Holder filed a replying affidavit dated 3<sup>rd</sup> July 2025 sworn by Peter Emisebe Owiti.
9. The Respondent avers that the Court delivered its judgement in the matter on the 29<sup>th</sup> November 2019 and a ruling on 9<sup>th</sup> February 2024 with decretal amount of Ksh.475,200 and interest at court's rate.
10. The Respondent avers that the court awarded costs which was taxed at Ksh.116,505 by the Hon. Assistant Deputy Register (taxing master) on 19<sup>th</sup> May 2025. It agrees that the award on cost has been paid but it is not part of the decretal amount of Ksh.475,000 as alleged by the Applicant.
11. The Respondent avers that the Applicant's claim that the amount claimed is exaggerated without providing an alternative figure for consideration hence buying time/delaying justice.
12. The Respondent avers that the Applicant has accepted that its properties were proclaimed of which it was at liberty to disclose the prices of the proclaimed properties as it is within its reach to enable the court to make an informed decision as it alleges that the amount owed to the Respondent is exaggerated.
13. It is the Respondent's case that the Applicant has not shown any effort to pay the Decree holder or comply with court decree/orders since November 2019 hence it cannot come to court to seek favours



that the proclaimed properties are tools of trade centre to their operation as a school and continue disobedience of court orders with impunity.

14. The Respondent avers that it is in the interest of justice the Court should issue an order to vary the warrants by removing the already paid amount of Ksh.116,505 being the costs of the Applicant application to enable it get justice by executing.
15. The Respondent avers that if the Applicant was dissatisfied with the court orders, the only way was to stay the execution and appeal against the same but not to disobey the court orders with impunity.
16. It is the Respondent's case that if the orders sought are granted, it will suffer irreparable damages.

### **Applicant's Submissions**

17. The Applicant submitted on three issues: how much is due to the claimant; whether the orders sought in this application should be granted; and going forward, should the college continue remitting any dues to the Union.
18. On the first issue, the Applicant submitted that in its judgment and decree, this court ordered the judgment debtor to remit dues for only 5 members. No costs or interest was ordered. Neither the judgment nor the decree was appealed, therefore, it is only the principal amount for the 5 that is due.
19. The Applicant submitted that it has always had 19 employees, no more, no less. A proper scrutiny of the Form S that was presented to the college by the judgment creditor revealed that some names had been repeated, thus, it erroneously showed 22 employees instead of 19. The judgment creditor filed their submissions in this matter on 22/8/2025 wherein they admit that the Form S had errors and that the actual employees in the institution were 19. Thus, the Applicant/Judgment Debtor contends that it always had a problem deducting union dues from non-existent members.
20. It is the Applicant's submission that this admission completely changes the nature of the judgment completely. Order 13 Rule 2 of the Civil Procedure Rules empowers the court to make any order as it deems just when a party makes an admission of a fact at any stage of the proceedings. It is also trite law that parties are bound by their pleadings.
21. The Applicant submitted that considering the Claimant/Respondent's admission and the fact that 17 employees had withdrawn from the union, there are only 2 union members in the Institution. Section 48(2) of the *Labour Relations Act* only mandates an employer to deduct and remit dues to a trade union when the Union Members exceed 5. Where the number falls below 5 like in this case, the Union should collect the remittances directly from its members.
22. On the second issue, the Applicant submitted that it has met the principles for grant of injunctions as enunciated in the case of *Giella v. Cassman Brown*. It has demonstrated a prima facie case with likelihood of success, that he is likely to suffer irreparable harm and if in doubt, on a balance of convenience.
23. The Applicant submitted that the dispute arises from the fact that the judgment states that the college deducts and remits dues for 5 employees. However, the Respondent well aware of the judgment and decree went ahead to commence execution and calculated dues for all 22 employees contrary to the said decree. Execution must mirror the judgement and decree and deviating from such is malicious on the part of such deviating party.
24. The Applicant submitted that the amount of dues as stated by the Decree Holder are exaggerated and not a true reflection of the amounts owed, therefore, not payable to the Decree holder. The Decree Holder claims Ksh. 475,200 as the decretal sum, yet the same exceeds the sum awarded by the court.



25. The Applicant submitted that it had already settled Ksh. 116,505 before the warrant of attachment were issued. Thus, if the Decree Holder is not stopped, it intends to reap more than he sowed, to the detriment of the Applicant, causing the Applicant unnecessary loss.
26. The Applicant submitted that the warrants of attachment were irregularly obtained by the Decree Holder as the proclamation notice was obtained prior to the warrants of attachment. Rule 12 of the Auctioneer Rules provides that a proclamation is only prepared once the warrant is obtained from the court. It cited the Supreme Court in *Mwigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] KESC 2 (KLR) wherein it held: “In many cases, procedure was so closely intertwined with the substance of a case, that it befitted not the attribute of mere technicality. The conventional wisdom, indeed, was that procedure was the handmaiden of justice.....”
27. It is the Applicant’s submission that procedure prescribed by statute is therefore not idle, and in the present case had proper procedure been followed, the proclamation notice should have been prepared and issued only after obtaining the warrant of attachment, as the warrants bear authority from the Court to proceed. Preparing a proforma notice before obtaining such authority therefore defeats the purpose of the Auctioneer Rules.
28. The Applicant submitted that Rule 12 provides that the proforma notice should indicate the value of specific items and the condition of each item and such inventory to be signed by the owner of the goods. In the instant case, the proforma notice does not disclose the value of the items listed, the condition of the listed items and further does not state who signed or refused to sign the said notice. Therefore, the proforma notice is defective and cannot be used in execution against the Applicant.

#### **Respondent/ Decree Holder’s Submissions**

29. The Respondent submitted that the parties representatives met and agreed on: the tabulation of union arrears be worked on 19 members as two names were repeated in the Check Forms (Form ‘S’); the tabulation should be from 31<sup>st</sup> March 2018 to July 2025 with an understanding that the Respondent shall effect union dues deductions and remittance from the month of August 2025 from 17 members as two of the Claimant members passed on in December 2024; and the tabulation to be done on individual member since salaries differ and for 96 months and interests at Court’s rate per month.
30. The Respondent submitted that warrant of attachment should be obtained with the name of the auctioneers hence the Applicant’s claim that the warrants of attachment were irregularly obtained by the Decree Holder as the proclamation notice was obtained prior is not true, correct or valid.
31. The Respondent submitted that the Applicant’s claim that the decretal amount on proclamation being in excess of the awarded amount is a mere allegation as the amount on the proclamation is similar to the one awarded in the Judgement being Ksh. 475,200. Additionally, the Applicant did not quote the exaggerated amounts on allegation of having already paid part of the decretal amount of Ksh. 116,505. The Respondent contends that this is not true as the said paid amount was the costs awarded in the Application therefore payment of the decretal amount has not been paid.
32. It is the Respondent’s submission that the Applicant does not disclose the amount it wishes to pay and how. It contends that the Applicant has not disclosed the amount or the tabulation for consideration by the court but rather urges the court to issue orders to assist it to continue disobeying of court orders.
33. The Respondent submitted that the court should consider its tabulation as it is in line with what the parties agreed upon by the parties’ representatives, further, the Applicant did not provide for any alternative tabulations in its application. The Respondent urges the court to allow the amendment of the warrant of attachment with the decretal amount of Ksh. 804,022 and interest of Ksh. 526,276.80,



COTU union dues of Ksh. 273,600.00, and interest of Ksh. 216,360.56, which amounts to Ksh. 1,016,237.36. This amount has been separated as Claimant union and COTU union dues for better understanding and is in line with the check off forms (FORM 'S') and the gazette notice on the same as the Claimant is a member/affiliate of COTU.

34. I have examined the averments and submissions of the parties herein. The applicants seeks to have a stay and warrants of attachment varied contesting that the warrants were issued after the attachment and the figure being executed is far above which was awarded by court.
35. I have considered the averments and it is true that execution proceeded before warrants of attachment were issued which is erroneous. The said execution is therefore nullified for want of due process. However, the respondent claimant is free to have fresh warrants of execution issued by the Deputy Registrar for execution purposes as the debt is still owing. The costs of this application are in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY OF NOVEMBER 2025.**

**HELLEN WASILWA**

**JUDGE**

