



Mission 180 Ministries & another v Sailoji (Miscellaneous Application E189 of 2025) [2025] KEELRC 3217 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3217 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E189 OF 2025**

**SC RUTTO, J
NOVEMBER 14, 2025**

BETWEEN

MISSION 180 MINISTRIES 1ST APPLICANT

JASON SHEPPARD 2ND APPLICANT

AND

JEREMIAH MUUYA SAILOJI RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 13th June, 2025, expressed to be brought under Order 22 Rule 18 and 25, Order 42 Rule 1 and 6 and Order 51 of the Civil Procedure Rules, through which the Applicants seek the following orders:
 - a. Spent.
 - b. Spent.
 - c. That there be a stay of execution of the entire Judgment and decree in Milimani MELRC/E517/2021 Jeremiah Muuya Sailoji vs Mission 180 Ministries and Jason Sheppard and the auctioneers MS Benwill Auctioneers be ordered to return to the applicant the motor vehicle number KDM 411V, Toyota Hiace, the 5 fresian cows and 3 calves pending the hearing and determination of this intended appeal.
 - d. That the Applicant be granted leave to appeal against the entire Judgment and order in Milimani MELRC/E517/2021 Jeremiah Muuya Sailoji vs Mission 180 Ministries and Jason Sheppard.
 - e. That costs of this application be in the cause.



2. The Application is anchored on the grounds set out on its face and further supported by the averments contained in the Supporting Affidavit of Jason Sheppard, the 2nd Applicant and Director of the 1st Applicant. The Applicants contend that on 13th June 2025, the Respondents, through their agents, M/s Benwill Auctioneers, unlawfully attached and carted away the 1st Applicant's motor vehicle registration number KDM 411V, a Toyota Hiace, together with five Friesian cows and three calves, purportedly in execution of the decree in Milimani MELRC/E517/2021; Jeremiah Muuya Sailoji v Mission 180 Ministries and Jason Sheppard.
3. The Applicants further contend that the execution is unlawful as it contravenes Order 22 Rule 18 of the Civil Procedure Rules, having not been preceded by a Notice to Show Cause, despite the judgment being over one year old, having been delivered on 20th October 2023.
4. It is further averred that the attachment is irregular as it was not preceded by a proclamation, as is mandatorily required under the [Auctioneers Act](#).
5. The Applicants further state that the attachment is unlawful since the sale of the attached goods was scheduled for Monday, 16th June 2025, in contravention of the [Civil Procedure Act](#) and the [Auctioneers Act](#), both of which require that any sale in execution of a decree be duly advertised and that a minimum of seven (7) days elapse between the date of advertisement and the auction.
6. It is further contended that the attachment is unlawful as it deprived the Applicants of the opportunity to insist on a pre-valuation of the attached property as provided under the [Auctioneers Act](#).
7. The Applicants aver that they previously sought a stay of execution before the trial court, which, however, held that it lacked jurisdiction to grant the same. Consequently, they have invoked the jurisdiction of this Honourable Court under Order 42, Rules 1 and 6.
8. The Applicants further aver that they operate a children's home for destitute children, and that the attached motor vehicle is used to transport the children to and from school, while the cows supply milk for their sustenance.
9. In response to the Notice of Motion, the Respondent, Jeremiah Muuya Sailoji, through his Advocate on record, filed Grounds of Opposition dated 27th June 2025 together with a Replying Affidavit sworn on even date.
10. In the Grounds of Opposition, the Respondent contends that: -
 1. The Application is filed out of time with no prayer for orders to file the Application or any intended Appeal out of time. There has been intentional and substantial delay by the Applicant in filing the present Application with no believable explanation for the inordinate delay.
 2. The Application is bad in law as it offends the mandatory provisions of the Employment and Labour Relations Court (Procedure) Rules on Stay of execution in case of appeal.
 3. That no Appeal has been filed in the case and neither the notice of Appeal has been filed and served on the respondent, yet the present Application is premised on the fact that stay orders be issued pending hearing and determination of the Appeal.
 4. The conduct of the Applicant has proceeded on the purport that they do not intend to file an Appeal.
 5. The Orders sought in the case cannot stand in law as the orders are sought in the interim pending the hearing and determination of an Appeal which Appeal has not been filed.



6. The orders sought in the notice of Motion Application are unenforceable, and the Applicant is seeking this court to issue orders in vain.
 7. The grounds on which the Application is premised and the averments in the Supporting Affidavit solely relates to MS Benwill Auctioneers, who are not a party to the present Application and it will therefore be unjust for the court to make Orders against a party not before it who has not been given audience before it based solely on the allegations brought forth by the Applicant.
 8. The Application is frivolous, vexatious, or intended to delay or obstruct justice and delay the Respondent from enjoying the fruits of his judgment. The Applicant has not provided and/or indicated payment of any security to protect the interest of the Respondent in the event the Appeal is successful.
11. The Respondent's averments in the Replying Affidavit substantially mirror the grounds set out in the Grounds of Opposition.

Submissions

12. Pursuant to the directions issued by the Court on 26th June 2025, the Application was canvassed by way of written submissions. Both parties complied and the Court has given due consideration to the said submissions.

Analysis and Determination

13. The Court has considered the Notice of Motion, the Respondent's Grounds of Opposition and Replying Affidavit, together with the parties' respective submissions and finds the central issue for determination as being whether the Application has merit.
14. It is noteworthy that the two substantive prayers sought by the Applicants in the instant Motion are: leave to appeal against the entire judgment and decree issued in Milimani MELRC/E517/2021; and an order for stay of execution pending the hearing and determination of the intended appeal.
15. It is evident from the record that the judgment of the lower court was delivered on 20th October 2023.
16. The period within which an appeal may be filed from the magistrate's court to this Court is set out under Rule 12(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024, which provides as follows:
- “[12]. (2) Where an appeal is from a magistrate's court or where no period of appeal is specified in the written law referred to in subrule (1), the appeal shall be filed within thirty days from the date the decision is delivered.”
17. In light of the foregoing, it is evident that the Applicants were required to lodge an appeal before this Court within thirty (30) days from the date of delivery of the judgment of the magistrate's court. Evidently, this was not done, and coupled with that, the Applicants have neither indicated nor explained the reasons for failing to file the appeal within the prescribed timeline.
18. What's more, it is apparent from the face of the Application that the Applicants have not sought leave to file the appeal out of time, nor has it prayed for an extension of time within which to do so.



19. Logically, the prerequisite for an order of stay of execution is the existence of a filed appeal. Seeing that no appeal has been lodged in the present case, the application for a stay of execution is without foundation.
20. Accordingly, the Court finds that the Application dated 13th June 2025 is devoid of merit and the orders sought are unsustainable.
21. Before concluding, I must point out that the Applicants have highlighted procedural lapses regarding the execution process undertaken by the Respondent, specifically the failure to issue a Notice to Show Cause in accordance with Order 22, Rule 18 of the Civil Procedure Rules, and the failure to serve a proclamation notice. Be that as it may, the Applicants have not sought an order to set aside the execution process. Consequently, no such order can issue to that effect.
22. In light of the foregoing, the Application dated 13th June 2025 is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Kabaila was instructed by Mr. Mutiso for the Applicants

Ms. Kibare for the Respondent

Elijoy Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

