

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE NO. E005 OF 2023**

**KAMDEV ENTERPRISES LIMITED.....PLAINTIFF**

**VERSUS**

**RODEX EAST AFRICA LIMITED.....DEFENDANT**

**RULING**

1. The Plaintiff has moved this Court by a Notice of Motion dated 27<sup>th</sup> August, 2025, brought under Order 22, Rule 7, Rule 9, Rule 10, Rule 48, Rule 61, Rule 64, Rule 68 and Rule 70, and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A, and Section 48 Civil Procedure Act, Article 47 of the Constitution seeking the following Orders;-

**1) Spent**

**2) Spent**

**3) That the Court be pleased to grant an order prohibiting the Respondent from transferring or charging the property in any way or from asking any benefit from such purported transfer or charge to facilitate the completion of execution by the decree holder/Applicant.**

**4) That this Court be pleased to grant leave to the Applicant to sell and/or continue with the intended sale of the property known as KISUMU MUNICIPALITY/BLOCK 6/III), located in Kisumu City, Kisumu County as detailed in the valuation report dated 20<sup>th</sup> August, 2025, prepared by GIMCO LIMITED.**

**5) That the Court be pleased to grant an Order setting the terms of sale as follows:-**

**5.1 M/S. PAMBO INVESTMENTS AUCTIONEERS, Indusi Road, Tom mboya Estate-Kisumu (hereinafter referred to auctioneers) be appointed to dispose of the subject property.**

***5.2 A notification of sale be issued to the auctioneers to conduct the sale of the subject property with due regard to applicable laws.***

***5.3 The subject property be disposed of by way of public auction guided by the Valuation Report dated 20<sup>th</sup> August, 2025 prepared in respect of the subject property by the valuer.***

***5.4 The Applicant be granted leave to place its bid (if it so wishes) with due regard to all applicable laws.***

***5.5 In the event the decree holders/ Applicant's bid is successful, the Applicant be granted leave to set off the bid amounts against the decretal sum, with any excess amounts realized being deposited in court for onward transmission to the Respondent.***

***6) That the Court be pleased to grant any other term and/or condition that it may deem fit and/or appropriate to impose.***

2. The grounds are on the face of the motion and supported by the Affidavit sworn by **Mitesh Arvinbhai Patel** on 27<sup>th</sup> August, 2025 as the director of the Applicant.
3. He stated that judgement in this matter was delivered on 22<sup>nd</sup> April, 2024 in favour of the Applicant, Kamdev Enterprises Limited, Against the Respondent, Rodex East Africa Limited. The Court awarded special damages of Kshs. 39,871,509.98/- with interest on special damages at 3% per month from June 2019, plus costs and interest at Court rates.
4. Following this award, the Applicant/Decree holder procured Warrants of Attachment dated 21<sup>st</sup> May, 2025, through M/S. Pambo Investments Auctioneers, to execute for recovery of the decretal sum. They further obtained the Decree dated 26<sup>th</sup> June, 2024, and is now in the process of executing it.
5. He stated that in the course of execution, the Applicant identified the subject property, Title No. KISUMU MUNICIPALITY/BLOCK 6/III, registered in the Respondent's name. He affirms that there has been no attempt at

execution in recovery, no payment, either partial or full of the decretal sum, and no appeal has been preferred against the judgment.

6. He deponed that the intended attachment is solely for the subject property and its consequent sale by auction is to execute the decree, but to facilitate execution, he requires:-

1. An order prohibiting transfer/charge of the property to safeguard it and the Applicant's right of recovery;
2. Leave to auctioneers to dispose of the property;
3. Leave to the Applicant to bid at the auction and upon a successful bid;
4. Leave to the Applicant to set off the bid amount against the decretal sum, with any surplus deposited in court.

7. The Applicant therefore prayed that the application be allowed to bring the matter to its logical and reasonable conclusion as litigation must come to an end, arguing that that this Court has the requisite jurisdiction to hear the application and grant the orders.

8. In his Supporting Affidavit, the Applicant reiterated the grounds of the application and in addition, described the location of the subject property, Title No. KISUMU MUNICIPALITY/BLOCK 6/III, as located opposite KPLC, near Total Kenya, Kisumu Busia Road. That the parcel of land measures approximately 0.0682 Hectares or 0.1685 Acres and has on it erected a development which is a part double-storey commercial building.

9. He elaborated on the valuation report dated 20<sup>th</sup> August, 2025 done by Gimco Limited which indicated the Market Value of the property as Kshs. 45,000,000.00/=, Mortgage Value of Kshs. 36,000,000.00/=, and Forced Sale Value of Kshs. 33,750,000.00/=. Thus, given the property's market and forced sale values, the attachment and auction sale are expected to procure recovery of the decretal sum.

10. The Respondent/ judgement Debtor herein was served with this application via email [mahirauto\\_fd@yahoo.com](mailto:mahirauto_fd@yahoo.com) as evidenced by the Affidavit of Service sworn on 9<sup>th</sup> September, 2025 by Mbugua Kagiri Advocate who is seized of this matter. However, the Respondent/ Judgement debtor did not file any response to this application.

**Analysis and determination**

11. After considering the application, Supporting Affidavit and all the annexures thereto, the issue for determination is whether this Court should issue the orders sought.

12. Order 22 of the Civil Procedure Rules provides for execution of decrees and orders. Rule 6 thereof provides: -

***“Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A: Provided that, where judgment in default of appearance or defence has been entered against a defendant, no execution by payment, attachment or eviction shall issue unless not less than ten days’ notice of the entry of judgment has been given to him either at his address for service or served on him personally, and a copy of that notice shall be filed with the first application for execution.”***

13. Order 22 Rules 7, 9 and 10 of Order 22 provide how the application for execution is to be made and the particulars to be included as well as the mode of execution required.

14. Order 22, Rule 48 provides that:-

***“Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from***

***transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.(2)A copy of the order shall be affixed on a conspicuous part of the property.”***

15. Order 22 Rule 61, 68 and 70 of the Civil Procedure Rules that was relied by the Applicant govern the conditions under which a Decree Holder can participate in the auction of the Judgment Debtor's property and the procedure for finalising the sale. These rules establishes three key principles regarding the sale of a Judgment -Debtor's property.
16. Firstly, Rule 61 strictly prohibits the Decree Holder from bidding for or purchasing the attached property unless they obtain the express permission of the Court; if permission is granted, the purchase amount can be set off against the outstanding decretal sum, leading to the satisfaction of the decree, but if the Decree Holder purchases the property without such permission, the Court may set aside the sale upon application by an affected party.
17. Secondly, Rule 68 simply affirms the Court's general authority to order the sale of immovable property in the execution of a decree.
18. Finally, Rule 70 outlines the payment procedure for a successful auction, requiring the purchaser, except when a set-off under Rule 61 applies, to pay the full purchase money into court upon delivery of the executed conveyance or transfer of the property.
19. In the present matter, the record confirms that a judgment was duly entered against the Respondent, awarding the Applicant a sum of Kshs 39,871,509.98, as evidenced by the decree issued on 26<sup>th</sup> June, 2024. No evidence was tendered before this Court to suggest that the Judgment Debtor

has either satisfied this debt or made any concrete proposal for its settlement.

20. To enforce this decree, the Applicant has successfully demonstrated that the Judgment Debtor is the registered owner of the suit property, having annexed an official search certificate dated 12<sup>th</sup> February, 2025. Given that the Judgment Debtor/Respondent failed to oppose this Application, this Court finds no reason to doubt the Applicant's claim regarding the property's ownership. The Applicant has thus demonstrated a clear entitlement to the prohibition order sought.
21. Further, Section 44 of the Civil Procedure Act provides that all property belonging to a Judgment-Debtor is liable to attachment, subject only to certain defined exceptions. In this case, the properties cited do not fall within those protected categories.
22. In the circumstances, the Applicant has sufficiently established the Judgment -Debtor's ownership of the subject property and that it has failed to satisfy the outstanding decretal sum , leaving the attachment of its immovable properties a necessary course of action, in accordance with Order 22 Rule 48 of the Civil Procedure Rules.
23. Regarding setting of terms of sale, the subject property has been attached pursuant to warrants of attachment dated 21<sup>st</sup> May, 2025 and Warrants of sale of Property of even date, both issued to Keysian Auctioneers. In the circumstances, the application herein is allowed in the following terms:-
  1. **A prohibition order be and is hereby issued prohibiting the Respondent/ Judgement debtor from transferring or charging the property in any way or from asking any benefit from such purported transfer or charge Land Reference No. KISUMU MUNICIPALITY/BLOCK 6/III).**
  2. **Leave be and is hereby granted to the Applicant to sell and/or continue with the intended sale of the property known as**

**KISUMU MUNICIPALITY/BLOCK 6/III), located in Kisumu City, Kisumu County as detailed in the valuation report dated 20<sup>th</sup> August, 2025, prepared by GIMCO LIMITED.**

**3. The terms of sale of the suit property shall be as proposed by the Applicant in paragraph 5 of the prayers sought and in accordance to the procedure provided under the law.**

**4. The costs of this application are awarded to the Applicant .**

**Dated, signed and delivered at Nakuru this 17<sup>th</sup> Day of November , 2025.**

**PATRICIA GICHOHI  
JUDGE**

**In the presence of:**

**N/A for the Applicant**

**N/A for Respondent**

**Kamau, Court Assistant**