



REPUBLIC OF KENYA



**Okech & another v Okoth & 3 others (Environment and Land Case
26 of 2021) [2025] KEELC 7902 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7902 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND CASE 26 OF 2021**

**AE DENA, J
NOVEMBER 13, 2025**

BETWEEN

CHRISTINE JAOKO OKECH 1ST PLAINTIFF

JACOB JUMA OKECH 2ND PLAINTIFF

AND

ALOYCE ODHIAMBO OKOTH 1ST DEFENDANT

CHRISPINE OTIENO NJAMABA 2ND DEFENDANT

CLEOPHAS OUMA JUMA 3RD DEFENDANT

JUDITH ADHIAMBO AKONGO 4TH DEFENDANT

RULING

1. The applicant has filed a Notice of Motion application dated 28th June, 2025, seeking the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. That the entire execution process of the warrants of attachment dated 13/06/2025 be set aside for being irregular and unlawful.
 6. That the alleged Proclamation dated 18/06/2025 be recalled and set aside.



7. That the warrants of attachment and warrants of sale dated 13/06/2025 be recalled for having been issued irregularly.
8. That the defendants' advocates be condemned to bear Auctioneer's Charges in full and any other incidental charges.
9. That the cost of this application be borne by the defendants.
2. The application is premised on the grounds on its face and the supporting affidavit of Jacob Juma Okech. It is deponed that judgment was delivered on 20/01/2022 in favour of the Defendants as against the applicant and the 1st Plaintiff and costs were taxed at Kshs. 418,275 on 16.01.2025.
3. It is averred that on 18/06/2025, the Defendants, through M/s Maywood Auctioneers, allegedly proclaimed the applicants properties and were likely to proceed with physical attachment of the same thereby rendering the present application pointless. Copies of the Proclamation and Warrant of Attachment are annexed.
4. The applicant wonders how the execution process was initiated when the said auctioneer has never visited the home and points the following irregularities.
 - a. That there is a dispute as to the amount of costs owing under the warrants of attachment dated 13/06/2025.
 - b. The interest for 5 months on the taxed costs of Kshs. 418,275/= from 16/01/2025 to the date of issuance of the warrants on 13/06/2025 is Kshs, 29,279/ =;
 - c. The interest claimed under the warrants amounts to theft in broad day-light being in excess by an astronomical sum of Kshs. 88,041/= hence the court ought to have rejected the application for execution.
 - d. The court ought to have judicially considered the application for execution by rejecting it in line with Order 22 Rule 13 (4) as read with Order 49 Rule 5 of the Civil procedure Rules, 2010.
 - e. There was no formal order by the court allowing issuance of warrants hence the same are null and void and the execution proceedings are irregular.
 - f. The warrants of attachment of the movable property were obtained from the Principal Magistrate's Court at Siaya, as opposed to the Environment and Land Court at Siaya where the judgement was delivered hence the same are null and void and the execution proceedings are irregular based on the said warrants.
5. That in view of the above the Defendants and or their advocate must be condemned to bear the Auctioneer's Charges arising from the irregular execution. It is deponed that the application herein is made in good faith and without delay and should be allowed in the interest of justice.

Replying Affidavit

6. The respondent by the replying affidavit sworn on 25/08/2025 and states costs were taxed at Kshs. 419,275 on 7th September 2022 and not Kshs. 418,275 on 16th January 2025 as alleged. A copy of Certificate of Costs dated 7th September 2022 is annexed.
7. That interest on the taxed costs began to accrue from 7th September 2022 at the court rates of 14% per annum in line with Section 26 and 27 of the *Civil Procedure Act*, and not from 16th January 2025. That the Certificate of Costs, although dated 7th September 2022, was only issued on 13th June 2025



when the Auctioneers were processing the attachment proceedings. This does not negate the date of taxation which remains 7th September 2022.

8. That pursuant to the judgment and decree, M/S Maywood Auctioneers lawfully proclaimed the 2nd Plaintiff/Applicant's property on 18th June 2025 in strict compliance with Order 22 of the Civil Procedure Rules. A copy of proclamation is attached. It is deponed that the Applicants remain judgment debtors who have failed and/or neglected to satisfy the decretal sum arising from the taxed costs.

Submissions

9. The application was heard by way of written submissions. The Applicants Submissions are dated 1/09/2025. The Respondents relied on their replying affidavit.
10. It is submitted that the warrants of attachment of the movable property were obtained from the Principal Magistrate's Court at Siaya, as opposed to the Environment and Land Court at Siaya where the judgement was delivered. Referring to the provisions of 22 Rule 4 that Environment and Land Court neither sent: a copy of the decree; a certificate setting forth that satisfaction of the decree has not been obtained by execution within its jurisdiction, nor a copy of any order for the execution of the decree. Therefore, the ELC at Siaya did not intend to have the warrants of attachment sent or executed at the Principal Magistrate's Court at Siaya.
11. The Environment and Land Court had jurisdiction to hear and determine the Respondents' application for execution of warrants, and therefore, the Principal Magistrate's court did not have such jurisdiction. That Principal Magistrate's court went beyond the scope of its jurisdiction by issuing the warrants of attachment dated 13/06/2025 without due regard to the law, rendering those warrants of attachment null and void.
12. It is asserted that where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. While referring to the case of Owners Of The Motor Vessel "Lilian S" Vs Caltex Oil "Kenya" [1989] Eklr: it is asserted Jurisdiction is everything and without it, a court has no power to make one more step.
13. That pursuant to the provisions of Section 31 of the *Civil Procedure Act* the Environment and Land Court at Siaya would have, on the application by the decree holder, granted an order sending the decree for execution at another court. That no such application was filed before the Environment and Land Court, and no order transferring the decree for execution at the Principal Magistrates Court was granted.
14. That in the absence of a formal order by the court allowing issuance of the warrants of attachment, the warrants are rendered null and void.
15. Rehashing the depositions on the excess amount in the warrants of attachment it is submitted the execution is an irregular execution and therefore the same should be set aside. Reliance is placed in the case of Makwata Construction and Engineering Company v Limuru Girls School [2024] KEHC 16037 (KLR).
16. On the process of how the process of execution was initiated, it is further submitted that the items listed are household goods but the auctioneer never visited the applicants home. It is contended that the procedure set out the provisions of Rule 12(1)(b) read together with Rule 13(b) of the Auctioneers Rules was ignored. The court is referred to Ramogi v Great Lakes University Kisumu; Odhiambo T/ A Jenks Auctioneers (Interested Party) [2025] KEELRC 437 (KLR).



17. On auctioneers charges it is urged that the Respondents should be condemned to bear the same as they are wholly to blame for proceeding with execution on the basis of warrants that were incurably defective. Further the auctioneer failed to visit the Applicant's premises to ascertain the value of the attached property or to obtain the Applicant's signature to validate the Proclamation. A direct consequence of the Respondents' defective instructions.
18. The court is referred to the case of *Mbuthia v. Jimba Credit Finance Corporation & Another* (1988) eKLR, where it was held that the power of sale cannot be exercised unless the notice requirements are duly fulfilled, and that failure to comply renders the subsequent process invalid.
19. It is also submitted that by proceeding with execution on a lump sum amount that is disputed, the Respondent has denied the Applicant his right to challenge the amount claimed. That if execution is allowed to proceed, the Applicant will be forced to pay an un-taxed and disputed amount, causing him irreparable financial loss which cannot be easily remedied. That the balance of convenience, therefore, weighs in favor of granting a stay to allow for the proper taxation process to take place.
20. On costs it is submitted that the award of costs is discretionary, such discretion must be exercised judiciously and in accordance with reason and justice. That since costs follow the event, courts should not deprive a successful party of costs unless it is shown that they acted unreasonably.

Analysis And Determination

21. I have considered the application, supporting affidavit, the responses thereto and the submissions on record. The court resonates with the issues as identified by the applicant and will adopt them as the issues for determination as follows;-
 1. Whether the court had jurisdiction to issue warrants of attachment.
 2. Whether the execution process of obtaining the warrants of attachment was regular.
 3. Whether the cost of the auctioneer's charges and any incidental charges should be borne by the respondents.
 4. Who should bear the costs of this application

whether the court had jurisdiction to issue warrants of attachment.

22. This suit was heard in the Environment and Land Court Siaya and judgement rendered on 20/01/2022 dismissing the plaintiffs suit who is the applicant in the present application. Costs were awarded to the defendants. The application arises from the defendants pursuit of the costs.
23. The record bears a letter addressed to the Deputy Registrar ELC Siaya Law Courts by the firm of Madialo & Co. Advocates. The letter is undated but received on 14/07/2022 outlining the 2nd defendants bill of costs and requesting for listing of the matter for assessment thereof. The bill is drawn to the amount of Kshs 419,275.00. A certificate of Cost dated 7/9/2022 is also on record issued on 13/06/2025.
24. My review of the above Certificate of Costs is shown to read 'In The Principal Magistrate Court At Siaya and certified by Hon. L Simiyu the Principal Magistrate. The same title 'In The Principal Magistrate Court At Siaya' is reflected in the Warrants of attachment.
25. The main contention on jurisdiction is that the warrant of attachment issued to Maywood Auctioneers is incompetent. That within the said warrants the decree is stated to be in favor of the Decree Holder in SiayaPMCC ELC Case No.26 Of2021(OS).



26. I have keenly perused the file and noted that the citation was erroneously given as a PMCC matter instead of Environment & Land Court Siaya. I say so for the following reasons. Firstly, the suit number 26 of 2021 (OS) is the correct serialisation except for the domicile court which is given as the Principal Magistrate Court. Secondly the Certificate of Costs is stamped and duly signed by the Deputy Registrar ELC Court. I would therefore not impugn the warrants of attachment for a typographical error on its face.

27. In view of the foregoing observation the provisions of Section 31 of the Civil Procedure Act do not apply. The point on jurisdiction is therefore misplaced.

Whether the execution process of obtaining the warrants of attachment was regular.

28. I will now delve into the other alleged irregularities raised in obtaining the warrants of attachments. The applicant alleges that the provisions of Rule 12(1) (b) read together with Rule 13(b) of the Auctioneers Rules were ignored.

29. Rule 12(1) (b) reads

“ 12. Movable other than perishable goods and livestock

1. Upon receipt of a court warrant or letter of instruction, the auctioneer shall, in case of movables other than goods of a perishable nature and livestock

a) Record the court warrant or letter of instruction in the register;

b) Prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect; in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction; on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction; ensure safe storage of the goods pending their auction; Arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter;

30. Arising from the above rules the proclamation must therefore be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed. The



applicant states the auctioneer never visited his home for purposes of the proclamation of the goods which as listed are household items.

31. Indeed my perusal of the Schedule of Moveable property clearly indicates assorted household items including the assorted livestock. Overleaf the document has been signed by the debtors agent and witnessed by one Suleiman which could be the Police Officer but the credentials are not given namely his employment number address and telephone including the OB number are blank. Even one name Suleiman would not suffice for purposes of an official document such as this.
32. The above is further signed by George A. Sino who certifies that the debtor accepted to sign the proclamation. However, I have not seen any such signature or mark of the debtor or any person on his behalf. The respondent in his supporting affidavit does not appear to give any rejoinder in this regard. The burden shifted to him to disprove the allegations. This lends credence to the fact that the auctioneer may not have visited the premises and if he visited he must have ignored the procedure required under the law. Even the certificate seems to be false.
33. I have read the decision in *Ramogi v Great Lakes University Kisumu; Odhiambo T/A Jenks Auctioneers (Interested Party)* [2025] KEELRC 437 (KLR) and I'm persuaded by the following dictum of my brother Nzioki Makau J.:-

“In my considered view, having failed to realise the full decretal sum in the execution meted in June 2024, the Decree Holder should have moved the Court to obtain leave to execute fresh warrants in terms of Rule 12(2)(b) of the Auctioneers Rules. The Auctioneer and the Decree Holder were required to render accounts and strictly adhere to the *Auctioneers Act* and the Rules thereunder. Having failed to do the correct thing, both the Decree Holder and the Interested Party were guilty of misdeed the court will mulct them with costs of this application to be borne jointly and severally.’ Emphasis is mine.”
34. Clearly the rules and procedure as discussed hereinbefore were ignored and the court cannot be seen to sanction impunity. It is the finding of this court that the process was irregular and nothing can come out of an irregularity.
35. About the excess interest charged I will not delve into the issue because this matter is not before me for review proper. The issue will lie in the first instance to the Deputy Registrar and taxing officer.
36. Having found the process irregular it is my considered view that the auctioneer cannot under these warrants be entitled to fees as against the applicant. I have already noted nothing comes out of an illegality and the auctioneer cannot benefit from an irregularity for which he was party to.
37. The upshot of the foregoing is that the application dated 28th June, 2025 is merited and it is disposed in the following terms
 1. The entire execution process of the warrants of attachment dated 13/06/2025 be and is hereby set aside for being irregular and unlawful.
 2. The proclamation dated 18/06/2025 is hereby recalled and set aside.
 3. The warrants of attachment and warrants of sale dated 13/06/2025 be recalled/lifted and cancelled.
 4. The applicant shall not bear the auctioneers fees.
 5. The costs of this application shall be borne by the Defendants.



Orders Accordingly

DELIVERED AND DATED AT SIAYA THIS 13TH DAY OF NOVEMBER 2025.

HON. LADY JUSTICE A.E. DENA

JUDGE

13/112025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr Osala for the 2nd Defendants Respondent

No appearance for the applicant

Court Assistant: Ishmael Orwa

