

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**MISCELLANEOUS APPLICATION NO. E167 OF 2024**  
**BOWRY & COMPANY ADVOCATES.....**  
**APPLICANT**  
**VERSUS**

**DIDMUS WEKESA BARASA**  
**MUTUA.....RESPONDENT/CLIENT**

**RULING**

1. Vide a notice of motion dated 24.10.25 the Applicant, Messrs Bowry & Company Advocates moved this court for the following orders: -
  - i. Spent
  - ii. That the Honourable court be pleased to direct and/or the Officer Commanding Station (O.C.S) Hardy Police Station and/or any other Police Officer stationed where the Respondent's proclaimed property are located to offer enough security to the Applicant's Auctioneer in order to enforce the Warrants of Attachment and Warrants of Sale issued by this Honourable Court on 19<sup>th</sup> August 2025 and 6<sup>th</sup> October 2025, respectively.

- iii. That applicant's Auctioneer, Charles M. Kamande T/A Chaka & Co. Auctioneers, be authorized to break open the gates of Respondent's residential premises located in the Karen Hardy area, in Nairobi (exact location to be provided to the police by the said Auctioneer), in the presence of the police, and gain entry into the Respondent's home for the purpose of seizing the proclaimed moveable properties in execution of the Warrants of Attachment and Warrants of Sale, should access be denied.
- iv. The Honourable court be pleased to grant leave to the Applicant to attach any other movable property of the Respondent that is not listed in the proclamation dated 16<sup>th</sup> September 2025.
- v. The Honourable Court do extend the Warrants of Attachment and Warrants of Sale issued to the Auctioneers M/S Chuka & Co. Auctioneers on 19<sup>th</sup> August, 2025 and 6<sup>th</sup> October 2025, respectively for a period not exceeding 45 days to enable the said Auctioneers to finalize the execution process.

vi. Such further Orders be made as the court may deem fit, just and expedient.

2. The application is supported by an affidavit of Charles Kamande sworn on 24.10.25. The gist of the application is that the Respondent owes the Applicant a sum of Ksh. 494,300/- being a balance of a decretal sum of Ksh 994,300/- on account of taxed costs as per the Certificate of costs dated 13.3.2025. That due to failure by the Respondent to make full payment of the said taxed costs, the Applicant was compelled to undertake execution process through Mr Charles M. Kamande T/A Chaka & Co. Auctioneers who upon receipt of the warrants of attachment and Warrants of sale, duly proclaimed the Respondents Chattels on 19<sup>th</sup> day of September 2025 but when he went to physically remove the attached chattels, he was denied entry into the Respondent's residence hence the filing of this application.
3. This matter came for direction before Justice Rose Ougo on 4.11.2025, and she directed that the application be served within 3 days and a response be filed within 3 days of service and a mention date was slated on 12.11.2025 before

this court for taking directions on how the application was to be canvassed.

4. On 12.11.2025 Counsel for the Applicant moved this court to expunge the Respondent's Replying Affidavit sworn on 11.11.2025 on grounds that it had been filed, without leave, outside the time frame granted by the court. On the part of the Respondent, one Miss Rotich who was holding brief for Mr Kiplagat arrogantly submitted that the lack of compliance with the directions of the court was premised on the fact that the Respondent had already settled the taxed costs and that he did not deem it necessary to conform with the set timelines. This court proceeded to expunge the Replying affidavit from the court record as Ms Rotich did not even crave for this court's leave to have the Replying affidavit by her client be deemed as timeously filed.

## **ANALYSIS AND DETERMINATION**

5. I have duly considered the application herein, the affidavit in support thereof and the enclosures attached thereto and I do find that attachment had already been done by the act of

issuing a proclamation. The auctioneer who issued the proclamation is entitled to payment of the Judgement sum plus his costs yet the respondent herein opted not to pay the Auctioneers costs which are payable by the respondent, pursuant to the provision of Rule 7 of the Auctioneers Rules which provides as follows:

7. "Payment of auctioneer's charges  
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. In light of the fact that the Auctioneer's costs of Ksh 88,933.40 are still outstanding as at the time of making this application, I will allow this application and I make the following orders: -

- i. The Warrants of Attachment and Warrants of Sale issued to M/s Chaka & Co. Auctioneers on 19.8.2025 and 6<sup>th</sup> October 2025 respectively are hereby extended for a period of 45 days from the date hereof.

- ii. The Applicant's Auctioneers M/S Charles M. Kamande T/A Chaka & Co. Auctioneers is hereby authorized to break open the gates of the Respondents residential premises located in Karen Hardy area Nairobi in the presence of the Officer Commanding Hardy Police Station and gain entry into the Respondent's home for purpose of seizing the proclaimed movable properties in execution of the Warrants of Attachment and Warrants of Sale, should access be denied; the seizure should however be limited to such properties whose value will cater for the unpaid auctioneers costs.
- iii. The O.C.S Hardy Police Station to assist in execution of those orders.
- iv. The Applicant shall meet the costs of facilitation of the O.C. S Hardy police station in the provision of security.
- v. The Applicant is awarded costs of this application assessed at Ksh 15,000/-
- vi. This file is hereby Marked as closed.

**Delivered, signed and dated at Bungoma this 20<sup>th</sup> day of November, 2025.**

**MWANAISHA S. SHARIFF  
JUDGE**

In the presence of :

N/A by Bowry

Ms Rotich holding brief for Mr Kiplagat for the Respondent