

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU

MISCELLANEOUS NO. E027 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

ZABLON MANDILA NDOCHI

APPLICANT

VERSUS

**ROBINSON INVESTMENT LTD ALIAS ROBINSON
SECURITY LTD**

RESPONDENT

RULING

Before the court for determination is the Applicant's Notice of Motion dated 18th September 2025 filed under Certificate of Urgency, seeking Orders that: -

1. Spent.

2. Spent.

3. *The Honourable Court be pleased to set aside the proclamation notice issued by Ekemwanya Auctioneers and an Order be issued unconditionally raising or lifting the attachment of all the assets proclaimed.*

4. Spent.

5. The court to make any other Order as it deems fit in the circumstances.

The Notice of Motion is expressed under Section 12 of the Employment and Labour Relations Court Act, Rules 45 and 73(2) of the Employment and Labour Relations Court (Procedure) Rules 2024, and Order 21(8) and 12(2) of the Civil Procedure Rules and is based on the grounds outlined on its face and the Supporting Affidavit of Mr. Stephen Mogusu Nyangwono sworn on 18th September 2025 who deposes that the Director of Occupational Safety and Health Services (herein after 'DOSHS') awarded Kshs.1,440,000 and the award was adopted by the court and the applicant wrote to the respondents counsel expressing an intention to settle the amount by monthly instalments of Kshs.50,000 but the respondents gave a counter-offer of Kshs.350,000 per month after which the applicant proposed Kshs.75,000 but the letter was not responded to.

The affiant further deposed that on 12th September 2025, it was served with a Proclamation Notice from Ekemwanya Auctioneers proclaiming its property yet negotiations were on-going and attachment would proceed in 7 days.

That no draft decree or signed decree had been served and the applicant had no wherewithal to settle the judgment amount at once and was ready and willing to abide by court directions.

Respondent's case

By a Replying Affidavit sworn by Mr. Zablon Mandila Nduchi on 13th October 2025, the affiant deponed that part of the application was partly compromised and a consent recorded on 9th October 2025 for payment of the sum by monthly instalments at kshs.110,000 and in the event of default execution to issue, but the respondent continued to pursue the court's determination of prayer No. 3 on proclamation and execution as it arose out of lawful instructions of the auctioneers to execute a valid judgment and decree and as the successful litigant, the applicant was entitled to initiate execution proceedings and the respondent was aware of the judgment and decree and had been served with Notice of entry of judgment but failed to settle the amount necessitating the warrants of Attachment.

That the fact that partys were engaged in correspondence did not deny the applicants the right to apply for warrants of attachment and proceed with

execution and it would be unjust and inequitable for the court to set aside the proclamation notice lawfully issued by the auctioneer.

That the applicant's intention in seeking the setting aside of the proclamation was to avoid settling the auctioneer's lawful fees arising from the proclamation.

The affiant further deposed that the applicant had not challenged the proclamation on procedural grounds or its validity.

Applicant's submissions

Counsel submitted that the respondents extracted the decree maliciously so as to take advantage of the negotiations the parties were engaged in as no draft decree had been shared.

Reliance was placed on the sentiments of the court in **Masinde Muliro University of Science and Technology V Alfatech Contractors Ltd & 2 Others** on decrees, and **Gatumuta V Kenya Power & Lighting Co. Ltd** [2023] KEHC 249 (KLR) and **George V Pollmans Tours & Safaris [2023]** KEELRC 3347 (KLR), to submit that the proclamation notice was issued contrary to the

law and obtained to ambush the applicant herein and the respondent should cater for the auctioneers fee.

Respondent's submissions

As to whether the warrants of attachment and proclamation were proper, lawful and valid, counsel cited the provisions of Section 38 of the Civil Procedure Act and Order 22 Rule 6 of the Civil Procedure Rules on execution of the decree, to urge that Order 22 Rule 6 of the Civil Procedure Rules was intended to safeguard judgment debtors who may not have had prior notice of the proceedings leading to the decree and the applicant was represented in court throughout by counsel and the 10-day notice was inapplicable to this case and in any case entry of judgment notice was served and there was no Order of stay of execution.

Reliance was placed on the sentiments of the Courts in **Republic V National Land Commission** [2024] KEELC 6525 KLR on the purpose of execution.

Counsel submitted that negotiations could not operate as a stay of execution nor does an appeal and the proclamation was valid and enforceable and the respondent was entitled to proceeds of execution.

Analysis

The facts of this case are uncontested as are the occurrences proceeding the instant application.

The only contested issue is the proclamation dated 12th September 2025 and more specifically, whether the respondent herein ought to have proceeded in the manner it did or acted regularly and in good faith.

While the respondent averred and submitted that he proceeded in accord with the relevant law, the applicant faults the manner in which the respondent proceed bearing in mind that the parties were negotiating.

Were the parties negotiating or making offers and counter offers on how the amount ought to be liquidated?

The DOSHS award dated 14th September 2022 was adopted as a judgment of the court on 30th July 2025 vide a Ruling of even date and both counsels were in court on that day.

The respondent adds that Notice of entry of judgment was served on the applicant on the same day.

The applicant was at all material times aware that judgment had been entered against it on 30th July 2025 which explains the letter dated 1st August 2025 requesting for indulgence to settle the judgment sum by monthly instalments of Kshs.50,000.00 which the respondent's counsel rejected by giving a counter offer of Kshs.350,000 per month.

By letter dated 5th August 2025 the applicant's counsel made another offer of Kshs.75,000 per month which the respondent's counsel does not appear to have responded to and which ought to have made the applicant change its strategy.

The fact that the letter was not responded to for over one (1) month was a clear indication that the new offer of Kshs.75,000 had been rejected and in the absence of a follow up by the applicant nothing prevented the respondent from proceeding with execution of the decree dated 8th August 2025.

Order 21 Rule 80 of the Civil Procedure rules addresses the dating of decrees and their preparation by either

party and service upon the other for approval for agreement.

However, Order 22 Rule 8(7) of the Rules provides:

Nothing in this Rule shall limit the power of the court approve a decree at the time of pronouncing the judgment in the suit or the power of the court to approve a draft Order at the time of making the Order.

In the instance case, the decree did not require any drafting by either of the parties as the court had framed it in the Orders made and the same was issued as it was having been read out by the court on 30th July 2025. The applicant was fully aware of the terms of the Decree and in the court's view no drafting and approval was necessary.

Similarly, the Ruling was uploaded on the Judiciary CTS on the same day at 12:16pm.

In a similar vein, Order 22 Rule 6 of the Civil Procedure Rules provides that

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 herein before contained to another court, then to such court or to the proper officer thereof; and applications were this rule shall be in accordance with Form No. 14 of Appendix A.

Provided, 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.

Clearly, and as submitted by the respondent's counsel, the *proviso* only applies to *ex parte* judgments and those entered in default appearance or defence to notify the parties that judgment had been entered against them.

Finally, the persuasive authorities cited by the applicant's counsel notwithstanding, the court is not persuaded that the respondent acted irregularly by instructing an auctioneer to proclaim the applicants assets more than one (1) month after the applicant's letter persuading the respondent to accept kshs.75,000 per month while the

respondent had indicated that it was ready to accommodate the applicant at Kshs.350,000 per month until payment in full.

Fortunately, the parties agreed on the amount payable per month as per the consent dictated to the court on 9th October, 2025.

It is unclear to the court why parties could not consensually resolve the issue of costs of the auctioneer as well.

In the court's view insisting that the parties were engaged in negotiations when no letter changed hands after the applicants last offer of Kshs.75,000 per month and no evidence of any verbal engagement before the proclamation or service of the draft decree for approval, yet the amount due was clearly indicated on Order No. 1 dated 30th July 2025 could not avail the applicants.

Having found that the respondent herein acted regularly and in accordance with the law, the engagement of the auctioneer who proclaimed the applicant's goods cannot be faulted and the proclamation can only be set aside subject to payment of the auctioneers costs for the

proclamation only. It is discernible that the proclamation was undertaken by the same person.

Finally, the court is satisfied that since the parties had recorded a consent on the modalities of payment of the judgment sum and the consequences of default, it is only fair that the proclamation dated 12th September 2025 be and is hereby set aside.

The applicant is however liable for the Auctioneers Proclamation charges under Part II of the Fourth Schedule to the Auctioneers Rules.

There shall be no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 26TH DAY OF NOVEMBER 2025.**

**DR. JACOB GAKERI
JUDGE**

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 has 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.

DR. JACOB GAKERI
JUDGE