



REPUBLIC OF KENYA



Faulu Micro Finance Bank Limited v Muyodi t/a Rhema Auctioneers (Civil Appeal E046 of 2023) [2025] KEHC 17832 (KLR) (10 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17832 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E046 OF 2023
MS SHARIFF, J
NOVEMBER 10, 2025**

BETWEEN

FAULU MICRO FINANCE BANK LIMITED APPELLANT

AND

WALTER MUSUNGU MUYODI T/A RHEMA AUCTIONEERS .. RESPONDENT

RULING

A. Application

1. The Appellant/Applicant has moved this court vide an application dated 27th October, 2025 supported by the affidavit sworn by Dancan Otieno Njoga on even dates wherein it craves for the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. That the execution is irregular and unlawful
 5. That the proclamation dated 22.10.2025 be and is hereby set aside for having been irregularly issued.
 6. That the warrant of attachment and warrant of sale dated 21.10.2025 be recalled/lifted and cancelled forthwith.
 7. That the respondent and/or the respondent's Advocates be condemned to bear the Auctioneer's charges, if any in full and any other incidental charges.
 8. That the costs of this application be borne by the Respondent.



2. The gist of this application is that whereas the respondent's party and party bill of costs was taxed at Kshs 175,700 on 15th October, 2025 and an order of stay of execution granted for 30 days from that date, the Respondent instructed Mr. Dominion Auctioneers to proclaim the Appellant's chattels within 8 days of the said ruling and during the subsistence of the orders of stay of execution.
3. The Appellant therefore craves that a declaration be made that the said attachment was irregular and unlawful as it is premature. Further that the Respondent be condemned to pay the costs of Ms dominion auctioneers and of this application.

B. Respondent's Response

4. This application has faced resistance from the Respondent byway of an affidavit in reply sworn on 31.10.2025 by Walter Musungu Muyodi wherein he deposes that the motive of the appellant in bringing this application is to deny him the opportunity to enjoy the fruits of a favourable ruling.
5. This application was canvassed byway of oral submissions. The Respondent opted to rely on his affidavit in reply and did not make any oral submissions.
6. The Appellant's advocate Mr. Dancan Otieno Njoga submitted in line with the contents of the supporting affidavit. He maintained that the proclamation done by Ms Dominion Auctioneers was premature, irregular and unlawful due to the existence of orders of stay that are to lapse on 15.11.2025. He therefore prays the said proclamation dated 22.10.2025 be set aside and the warrants of attachment and sale dated 21.10.2025 be recalled, lifted and/or cancelled forthwith. He further craves that the respondent and his advocates be condemned to meet the costs of this application and the auctioneer's costs.

Analysis and determination;

7. I have considered the application herein, the affidavit in support thereof and the enclosures attached thereto. I have also considered the affidavit in reply and the oral submissions of Mr. Dancan Otieno Njoga and the singular issue that arises for determination herein is whether the proclamation done by Ms Dominion Auctioneers was irregular and unlawful.
8. The court proceedings of the 15th October 2025 are clear that Hon Ngetich had granted the applicant/Appellant an order of stay of execution for 30 days. Wherefore the warrants of attachment dated 21st October, 2025 were issued irregularly as the stay order was still subsisting and alive. It follows therefore that the proclamation done pursuant to those warrants was also irregular and unlawful.
9. On the balance I do find merit in this application and I allow and make the following orders:
 - i. The warrants of attachment and sale dated 21.10.2025 are hereby recalled.
 - ii. The proclamation done pursuant to the said warrants of attachment and sale is hereby declared null and void and is accordingly set aside.
 - iii. he respondent herein shall bear the costs of his auctioneers; Messr Dominion auctioneers and the costs of this application assessed at Kshs 15,000.
 - iv. This file is hereby marked as closed.

DELIVERED, SIGNED, AND DATED AT BUNGOMA THIS 10TH DAY OF NOVEMBER, 2025.

MWANAISHA S. SHARIFF

JUDGE.

