



**Akiko v Mjengo Limited (Cause E1462 of 2017)
[2025] KEELRC 3530 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3530 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1462 OF 2017**

**JW KELI, J
DECEMBER 10, 2025**

BETWEEN

BENARD ACHIENG AKIKO CLAIMANT

AND

MJENGO LIMITED RESPONDENT

RULING

1. The applicant being aggrieved by the decision of the claimant/judgment creditor of the instruction auctioneer to attach its goods, and alleging it had already paid the decretal sum by time of instruction of auctioneer, filed an application dated 16th September 2025 under Rule 73 of the Employment and Labour Relations Court (Procedure) Rules 2024, Order 22, rule 22 of the Civil Procedure Rules, 2010, and the inherent power of the court seeking for the following Orders-
 - 1) spent
 - 2) spent
 - 3) Pending the hearing and determination of this application inter partes and further orders of the court, all of the respondent’s assets/ motor vehicles or any goods attached pursuant to the warrants of attachment or execution issued in this matter on 29th August 2025 and the notice of proclamation and attachment issued on 4th September 2024 by BEMAC Auctioneers be released to the respondent unconditionally.
 - 4) Pending the hearing and determination of this application, an injunction be issued restraining the claimant, his agents or any person acting on his instructions from executing the decree issued by this court in this matter.



- 5) The warrants of attachment or execution issued in this matter on 29th August 2025 and the proclamation and attachment issued on 4th September 2024 by BEMAC Auctioneers be declared irregular, null and void and the execution/attachment orders be set aside.
- 6.) The claimant to bear the costs of the auctioneers arising from attachment or execution issued in this matter on 29th August 2025 and the proclamation and attachment issued on 4th September 2024 by BEMAC Auctioneers.
- 7) The costs of this application be awarded to the respondent.

2. Grounds of the application

- a. On 20th December 2024, judgment was entered in favour of the Claimant in the sum of Kshs 106,311.70. The claimant was also awarded costs and interest which were ascertained vide a ruling delivered on 30th July 2025 which certified the party and party bill of costs 169,180. Accordingly, the total amount payable to the claimant was Kshs 275,491.70.
- b. The above sums have been paid in full to the claimant through his advocates and the sequence of events regarding the matter is as follows:-
 - i. On 4th August 2025, the claimants advocates forwarded to the respondent their bank details for purposes of payment of the above sum.
 - ii. On 25th August 2025, the respondent/Applicant issued Cheque No. 02xxx drawn on Bank of Baroda Limited in favour of the Claimant's advocates; the cheque was deposited into the claimant's advocates' account with NCBA Bank the same day.
 - iii. The amount was debited from the respondent's bank account on 26th August 2025, thereby satisfying the decretal sum.
 - iv. Proof of this payment was forwarded to the Claimant's advocates on 26th August 2025, and a follow up made vide a telephone call on 4th September 2025 to the claimant's advocates. On 4th September 2024, the claimant's advocates requested for time to confirm with their bank and acknowledge receipt.
 - v. Despite the above undertaking, the claimant's advocates failed to acknowledge receipt or communicate back, but have proceeded to issue instructions to BEMAC Auctioneers, who have proclaimed and attached the respondent's goods.
- c) Despite the full payment of the decretal sum, the claimant has since engaged auctioneers who have attached and seized the respondent's goods.
- d) The above attachment is irregular, null and void and unless an injunction is issued, the claimant would have received double payments thus, unjustly enriched.
- e) The respondent has made numerous telephone calls, texts and emails to the claimant's advocates and the auctioneers to stop the illegal seizure of the respondent's goods. However, the same has been in vain thus necessitating this application.
- f) The auctioneers have since attached and seized six motor vehicles belonging to the respondent and valued in excess of Kshs 200,000,000. The vehicles together with the goods which were meant to be delivered to customers across the country have now been seized and risk being sold for purposes of satisfying a decree of Kshs 275,491.70 which, in any event, has been settled.



- g) That unless this Honourable Court grants the relief prayed, the respondent will suffer irreparable loss, including destruction, sale or disposal of its goods.

Response by claimant /Decree Holder

3. The response was vide affidavit of Mildred K. Gakoi an Advocate of the High Court of Kenya practicing as such and having conduct of this matter on behalf of the Claimant. She averred as follows-
- a. That on 7th August 2025 we sent the Respondent a letter dated 4th August 2025 asking that they settle the decretal sum & that it is not true that we are seeking to unjustly enrich ourselves we were left with no choice but to proceed with execution because no payment was received from the Respondent, despite the Respondent's insistence to the contrary.
 - b. That the warrants of attachment and sale of property dated 29th August 2025 were lawfully obtained by the Auctioneers and are therefore regular.
 - c. That the Respondent seeks that we bear the costs arising from the proclamation, attachment and the present Application. However, we only acted on information available to us and in the absence of proof of payment, we were well within our right to execute. We are therefore strongly opposed to Prayers 6 and 7 of the Application being granted. It is only fair that the Respondent bears the said costs (Annexed hereto and marked "MKG-3" is a copy of the Auctioneers' Fee note).
4. The application was canvassed orally with Mr. Andiwo advocating for the applicant and Ms. Mideva for the respondent/claimant. Both parties relied on their pleadings as above. Whereas the respondent denied receipt of the email forwarding evidence of payment of the decretal sum, there was no evidence before the court that the email bounced or was not received. The email was the one used in the proceedings by the claimant . The court found that the applicant had proved on the balance of probabilities that on 26th August 2025, they communicated with the claimant's counsel and forwarded a copy of the deposit slip and a copy of the cheque to email xxx@yahoo.com (pages 6 and 7 of the annexure to the application. That was the same email address under which the respondent wrote to the applicant on 7th August 2025(page 7 of the application). The respondent alleged the funds did not reflect in their bank account as communicated on 26th August before the proclamation but failed to produce their bank statements to prove their position. the cheque did not bounce. The court finds on balance of probabilities that the respondent received emails of 26th August 2025 forwarding evidence of payment of the decretal sum and proceeded to irregularly instruct the auctioneer on 28th August 2025, who received warrants of attachment on 29th August 2025. The court agreed with the applicant that, having instructed the auctioneer when the claimant's advocates had been informed with evidence of the payment of the debt, the respondent /Judgment holder is to bear costs related to the irregular attachment, including those of the auctioneer, and it is so ordered. Costs of the application to the applicant.
5. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno



Applicant – Andiwo

Respondent- Absent

