



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT AND LAND COURT
ELCLC CASE NO. 812 OF 2015

ANDREWS
APARTMENTS.....PLAINTIFF/
APPLICANT

-VERSUS-

NINETY-FOUR EAST CHURCH
PROPERTIES Ltd.....1ST
DEFENDANT
ASHLEAH DEVELOPERS
LTD.....2ND DEFENDANT
BETABASE
AUCTIONEERS.....RESP
ONDENT

RULING

1. The Applicant, Andrews Apartments, has moved this Court by a Notice of Motion dated 4th March 2025, brought **under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 1 and Order 22 Rule 21 of the Civil Procedure Rules**, seeking the following substantive order:

a) That the Notification of Sale of L.R. No. 1870/VI/94 issued to the Respondent be recalled and annulled, and a fresh Notification of Sale be issued to another auctioneer to be appointed by the Applicant/Decree Holder.

2. In the Supporting Affidavit sworn on 4th March 2025, Fredrick Ngatia, a director of the Applicant, avers that although judgment was entered in favour of the Applicant in 2019 and the decretal sum with interest now exceeds Kshs. 19,000,000, the sale of L.R. No. 1870/VI/94 which the Court

directed on 18th November 2021 has not taken place.

3. He states that the Respondent, Betabase Auctioneers, failed to conduct the auction, failed to disclose the reasons for the aborted sale, and subsequently failed to return the lapsed Notification of Sale as directed by the Court on 3rd July 2023. He further avers that despite several written inquiries and Court mentions on 10th December 2024 and 13th February 2025, the Respondent has repeatedly failed to attend Court or provide updates on the progress of the intended sale.
4. He further depones that due to the Respondent's prolonged inaction, the execution of the decree has been frustrated for nearly four years, thereby denying the Applicant the fruits of judgment. He confirms that all service requirements were duly complied with and that the Respondent has shown no interest in executing the Court's directives.
5. Consequently, he asserts that the Notification of Sale currently held by the Respondent should be recalled and annulled, and that a fresh Notification of Sale should be issued to a different licensed auctioneer to enable the expeditious enforcement of the decree.

Response

6. The 1st Defendant, through the Replying Affidavit of Dharmesh Shah sworn on 16th May 2025, opposes the application. He avers that although the Applicant seeks to have the suit property sold in execution of the decree, the Applicant has not disclosed to the Court that L.R. No. 1870/VI/94 is presently encumbered by several caveats and subsisting court orders. According to him, the existence of these restrictions renders the property unavailable for sale and any fresh Notification of Sale issued at this stage would be issued in vain.

7. He further depones that a recent official search shows: a caveat by Shital Vinedra Desai claiming purchaser's interest, a Court order of 29th March 2017 restraining dealings over the land, another order of 21st December 2018 issued in High Court Civil Suit No. 50 of 2018, and an additional order of 4th March 2019 issued in this suit restricting any transactions on the property. On that basis, the 1st Defendant urges the Court to dismiss the application.

Submissions

8. The Applicant filed written submissions in support of the Motion dated 4th March 2025, arguing that the Respondent auctioneer failed to diligently execute the Court's orders of 18th November 2021 directing the sale of L.R. No. 1870/VI/94. It is submitted that the Respondent ignored multiple Court directions, failed to return the lapsed Notification of Sale as ordered by the Deputy Registrar on 3rd July 2023, repeatedly failed to attend Court mentions despite due service, and has provided no update on execution for over four years.
9. The Applicant contends that this prolonged inaction has denied it the fruits of judgment, now exceeding Kshs. 19 million, thereby offending Articles 48 and 159(2)(b) of the Constitution. The Applicant relied on the authorities of **Teachers Service Commission v Simon P. Kamau & 19 Others (2015) eKLR, Kagwimi Kang'ethe & Co. Advocates v Penelope Combes & Another (2015) eKLR, Mobil Kitale Service Ltd v Mobil Oil Kenya Ltd (HCC 205 of 1990)** and **Allen v Sir Alfred McAlpine & Sons (1968) 1 All ER 543**, all underscoring that justice must not be delayed and that a decree-holder is entitled to timely enjoyment of a valid judgment.
10. The Applicant therefore urged the Court to recall and annul the Notification of Sale issued to the Respondent and to direct issuance of a fresh Notification of Sale to a new auctioneer.

11. On the other hand, when the matter came up on 1st October 2025, the 1st Defendant informed the Court that it would not be filing any submissions and would rely entirely on the Replying Affidavit of Dharmesh Shah sworn on 16th May 2025. In that affidavit, the 1st Defendant contends that the suit property is subject to caveats and subsisting court orders, rendering it unavailable for sale, and accordingly prays that the application be dismissed. No other party filed submissions.

Issues for Determination

12. Upon consideration of the application, the affidavits, the submissions on record, and the applicable law, the Court distils the following issues for determination:

- a) Whether the Respondent failed to diligently execute the Court's orders of 18th November 2021 regarding the sale of L.R. No. 1870/VI/94.
- b) Whether, in the circumstances, the Notification of Sale issued to the Respondent should be recalled and annulled, and a fresh Notification of Sale issued to a different auctioneer.

Analysis and Determination

Analysis on Issue 1: Whether the Respondent Failed to Diligently Execute the Court's Orders of 18th November 2021 regarding the sale of L.R. No. 1870/VI/94.

13. The starting point is the order issued on 18th November 2021, through which the Court directed that L.R. No. 1870/VI/94 be sold by public auction under the conduct of the Respondent auctioneer in accordance with a duly issued Notification of Sale. The material placed before the Court establishes that a Notification of Sale was indeed issued on 24th February 2023, but the

anticipated auction did not take place.

14. No explanation was furnished to either the Court or the Applicant regarding the failure of the sale. When the validity period of that notification lapsed, the Deputy Registrar, on 3rd July 2023, issued clear directions requiring the Respondent to return the lapsed notice and collect a fresh one for re-advertisement. The Respondent did not comply with that directive.
15. The record further shows that the matter subsequently came before the Court for mentions on 10th December 2024 and 13th February 2025, both of which the Respondent failed to attend despite evidence of due service. At no point has the Respondent provided a reason for its persistent absence or its failure to progress the execution process.
16. The Respondent also elected not to file any response to the present application. In the circumstances, the Respondent's conduct stands in contrast with the obligations imposed on auctioneers as officers of the Court under Section 23 of the Auctioneers Act and Rule 6 of the Auctioneers (Practice) Rules, which require diligence, decorum and faithful adherence to court instructions.
17. The prolonged non-action has resulted in the complete stagnation of execution for several years. On the uncontested evidence before the Court, it is apparent that the Respondent has not discharged its mandate diligently and has failed to give effect to the Court's orders of 18th November 2021.

Analysis on Issue 2: Whether the Notification of Sale Should Be Recalled and Annulled and a Fresh Notification Issued to Another Auctioneer

18. Having considered the conduct of the Respondent, the Court turns to the question of whether the circumstances justify recalling the existing

Notification of Sale and authorising the issuance of a fresh one to a different auctioneer. The record demonstrates that for a period now exceeding four years from the date of the Court's directive of 18th November 2021, no meaningful progress has been made towards the disposal of the property.

19. The Respondent has neither conducted a successful auction nor complied with directions aimed at facilitating re-advertisement. As a result, execution has remained at a standstill, with the decretal amount continuing to accrue interest to the detriment of the Applicant. The law recognises the right of a decree-holder to enjoy the fruits of judgment without unreasonable delay, and prolonged stagnation of execution undermines both procedural justice and the constitutional principles embodied in Articles 48 and 159(2)(b), which safeguard access to justice and the timely resolution of disputes.
20. The 1st Defendant has argued that the property is subject to caveats and subsisting court orders, and that any Notification of Sale would therefore be futile. While the Court has taken note of the entries on the title, it is equally apparent that the order of 18th November 2021 authorising sale has not been varied, stayed, or set aside.
21. The Court has not been presented with any subsequent order that supersedes or suspends that directive. Moreover, the presence of a caveat does not, without more, extinguish or bar the execution of a valid decree; it merely operates to protect the caveator's interest, which can be addressed in the distribution of proceeds.
22. In the circumstances, the Respondent's failure to act cannot be justified by the matters raised by the 1st Defendant, particularly where the Respondent itself has not appeared to assert or explain any such impediment. The Court is therefore satisfied that recalling the current Notification of Sale and authorising the Applicant to engage a different licensed auctioneer is

necessary to safeguard the integrity of the execution process and to give effect to the subsisting decree.

Disposition

23. In light of the foregoing analysis, and having considered the application, the affidavits, the submissions on record, and the applicable law, the Court finds that the Respondent has failed to diligently execute the Court's orders of 18th November 2021, and that the continued retention of the Notification of Sale by the Respondent has frustrated the execution of a valid decree. The objections raised by the 1st Defendant do not disclose any legal bar to the enforcement of the said orders and do not displace the Applicant's entitlement to proceed with execution.

24. Accordingly, the Court makes the following orders:

- a) The Notification of Sale in respect of L.R. No. 1870/VI/94 issued to the Respondent, Betabase Auctioneers, is hereby recalled and annulled.
- b) The Applicant/Decree Holder is granted leave to nominate another licensed auctioneer, who shall thereupon be issued with a fresh Notification of Sale by the Deputy Registrar for purposes of re-advertisement and sale of the property in accordance with the orders of 18th November 2021.
- c) The new auctioneer shall proceed with the execution strictly in compliance with the Auctioneers Act, the Auctioneers (Practice) Rules, and all directions of this Court.
- d) The costs of this application shall be borne by the Respondent, Betabase Auctioneers.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **19th** day of **December, 2025**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Ngatia..... for the Plaintiff/Applicant

Mr. Kihungi..... for the 1st Defendants

Kyalo for Otwala..... for the Interested Party

Philomena W...... Court Assistant