

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E227 OF 2023

BIN DAUD LIMITED.....
.....PLAINTIFF

-VERSUS-

MICAH HADYN MITOKO.....1ST
DEFENDANT/RESPONDENT

GRACE JANE OHAYO-MITOKO.....2ND
DEFENDANT/RESPONDENT

AND

LASALLE AUTO CENTRE
LIMITED.....OBJECTOR/APPLICANT

RULING

1. Before me is the notice of motion dated 15th August, 2025 filed by the objector/applicant, and it is expressed to be brought under **Orders 22 Rule 1 and Order 10 Rule 11 and Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A, 1B & 3A & 63** of the **Civil Procedure Act** seeking the following orders: -

1. *Spent.*

2. *That pending the hearing and determination of this application inter-partes, this honourable court be pleased to issue and interlocutory order of injunction restraining the defendants whether by themselves, their servants, agents, and/or any of them either individually or jointly or otherwise from selling, disposing of, or otherwise interfering with the tenant's property as proclaimed by*

auctioneers under the instructions of the defendants. The attached properties include:-

- a. Wheel alignment stand.***
- b. Hydraulic Stands.***
- c. Two vacuum cleaners.***
- d. Fire extinguisher.***
- e. Car wash machine.***
- f. Jerk.***
- g. Stands for jerking.***
- h. Grease Can.***
- i. Tool box.***
- j. GT325 Pro.***
- k. Tyres.***
- l. A wheel balancer.***
- m. An oil drainage bucket.***
- n. A wheel alignment machine.***

- 3. That pending the hearing and determination of this application, this honourable court be pleased to issue an interlocutory order of injunction restraining the defendants whether by themselves, their servants, agents and/or any of them from either individually or jointly or otherwise from selling, disposing of, or otherwise interfering with the objector's/tenant's property as proclaimed by the auctioneers under the instructions of the defendants being hydraulic stands, two cleaners, fire extinguisher, car wash machine, jerk, stands for jerking, grease can, tool box, GT325 pro, tyres, a wheel balancer, an oil drainage bucket, and a wheel alignment.***

4. That this honourable court be pleased to issue an order directing the defendants whether by themselves, their servants, agents and/or any of them either individually or jointly to release the objector/ tenant's property being hydraulic stands, two vacuum cleaners, fire extinguisher, car wash machine, jerk, stands for jerking, grease can, tool box, GT325 pro, tyres, a wheel balancer, an oil drainage bucket, and a wheel alignment machine; as proclaimed by auctioneers under the instructions of the 1st and 2nd defendants.

5. The costs of this application be provided for.

2. The application is premised on the grounds on the face of it. The application is further supported by the affidavit of Ahmed Abdirahman Abdulle, the director of the objector/applicant sworn on even date. The objector/applicant deposed that vide a lease agreement dated 2nd April, 2024, it leased the premises on L.R. No. 12533/6 being the suit property, and has been in possession and operating a business being the Petrol Station, Petrol Service Bay, Car Wash and Tyre Centre in the Office Complex on the Premises.

3. It was further deposed that the objector/applicant has been a sub-tenant of the plaintiff in the premises from 2nd April, 2024. He

added that on 9th July, 2025, the defendants' auctioneers proceeded to attach its properties for alleged distress for rent arrears for the sum of Kenya Shillings Four Million, Twenty Thousand Only (KES 4,020,000/-) allegedly owed by the plaintiff.

4. The objector/ applicant deposed that pursuant to a court order dated 28th May, 2025 in MCCCmisc/E1318 OF 2025, BRAYAN MWANGI T/A VINTAGE AUCTIONEERS & ANOTHER VS BIN DAUD LIMITED, whereby leave was granted to the defendant's auctioneers to attach properties of the plaintiff herein for alleged rent arrears.
5. He added that the objector/applicant, pursuant to the lease agreement dated 2nd April, 2024 with the plaintiff paid the sum of Kenya Shillings Twenty- Six Million, Four Hundred Thousand (KES 26,400,000/-) to the plaintiff being two (2) months' deposit and 22 months' rent in advance from 1st May 2024 to 31st March, 2026. Further, that the objector/ applicant is not in any arrears of rent to either the 1st and 2nd defendants nor the plaintiff, and any claim for distress for rent attaching its goods as per the notification of sale of movable property dated 9th July, 2025 issued by the 1st and 2nd defendant's auctioneers was illegal and unlawful.

6. The objector/applicant further deposed that the plaintiff did not have any legal or equitable interest in the property proclaimed. Further, that it is apprehensive that if the orders herein are not issued, it stands to suffer substantial loss, noting that the property has been unlawfully attached by the defendants through their auctioneers.
7. The application was opposed vide the replying affidavit of the 2nd defendant/respondent sworn on 22nd October, 2025. She deposed that the objector applicant had filed a similar application dated 15th May, 2025 which was heard inter parties and dismissed on 14th August, 2025. She further deposed that the instant application is *res judicata* and an abuse of the court process. She added that the plaintiff having failed to pay the rent, prompted the objector/ applicant to file for distress for rent. She urged the court to dismiss the application with costs.
8. The objector/applicant in response filed a supplementary affidavit sworn on 10th December, 2025. He averred that they had filed a notice of motion application dated 9th July, 2025 in Milimani MCCC Misc. No. E1318 of 2025 Brayan Mwangi Muthoni, Micah Hadyn Mitoko & Dr. Grace J.A. Ohayo- Mitoko v Bin Daud Limited seeking *inter alia* to have its materials and equipment released following proclamation by the defendant's auctioneers.

9. It was further deposed that the court delivered a ruling on the objector's application on 14th August, 2025 and struck out the objector's application on the basis of procedural technicalities as the objector had filed the application for the release of the materials and equipment in a miscellaneous application file and not a properly instituted civil action. Further, that the earlier application was dismissed on procedural technicalities and not on the merits, and therefore the doctrine of *res judicata* does not apply in this application as there is no final determination on the substantive issue in dispute.
10. The objector/applicant averred that it is in the interest of justice that the orders sought are granted for the release of its tools and equipment having established that the plaintiff had no equitable interest in the same.
11. The application was canvassed through written submissions. The objector/applicant filed its written submissions dated 10th December, 2025. The defendants/respondents did not file their written submissions. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the objector/applicant. The issue for determination is whether *the application is re judicata*.

12. **Section 7 of the Civil Procedure Act, Cap 21** provides that:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”

13. It is worthwhile to note that a person shall not commence more than one action in respect of the same or a substantially similar cause of action and the court must attempt to resolve multiple actions involving a party and determine all matters in dispute in an action so as to avoid multiplicity of actions.

14. In the case of **Uhuru Highway Development Limited Vs Central Bank of Kenya, Exchange Bank Ltd (In Voluntary Liquidation), Kamlesh Mansukhlal Pattni & Pansla Investments Ltd [1998] KEHC 177 (KLR)** the court in an earlier application ruled that the application before it was *res judicata* as the issue of injunction had been twice rejected both by the High Court and the Court of Appeal on merits and that the ruling by the High Court

had not been appealed against. The court further emphasized that the same application having been finally determined “thrice by the High Court and twice by the Court of Appeal”, it could not be resuscitated by another application.

15. The Court of Appeal further stated that:-

“That is to say, there must be an end to applications of similar nature, that is to further, under principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be mandated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation. It is this precise problem that Section 89 of or Civil Procedure Act caters for.”

16. It is not in dispute that there exists an order dated 14th August, 2025 emanating from the applicant’s application dated 9th July, 2025. In the said application, the issue of release of the proclaimed assets was heard and determined by the trial court in MCCC MISC/E1318/2025 wherein the matters were directly and substantially in issue as those in the instant application.

17. The objector/applicant by bringing an application on the same issue at different times one after another is hell bent not only to defeat the course of justice but also an abuse of the court process which this court shall not condone.

18. The upshot of the foregoing is that the instant application is *res judicata* and the same is dismissed. Each party to bear its own costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 19TH DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
19/12/2025.**

In the presence of:

Mr. Benson Agungo - Court assistant

Ms. Mwihaki holding brief for Ms. Wangui for the Objector/Applicant

No appearance for the Plaintiff

No appearance for the Defendants