

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION NO. E024 OF 2024**

BETWEEN

GEOFFREY KARIUKI t/a DIRECT AUCTIONEERS DECREE-HOLDER

VERSUS

1. SHERACCO SAVINGS & CREDIT SOCIETY LIMITED
2. KARUTURI LIMITED
3. CFC BANK LIMITED JUDGMENT-DEBTORS

RULING

1. The Auctioneer filed an application dated 8th August 2025, seeking orders, to freeze the 2nd Respondent's bank accounts, held with the 3rd Respondent's Chiromo Branch, Nairobi.
2. The freezing order is meant to preserve the sum of Kshs. 1,619,000 held in the accounts, to be applied in payment of the Auctioneer's costs, awarded by the Court.
3. He submits that the Court is authorized to issue a freezing order, under Order 39 Rule 5 of the Civil Procedure Rules, 2010.
4. He submits that he was duly instructed to execute a valid decree of the Court. He successfully executed decree, leading to its satisfaction. The

sum of Kshs. 1,619,000 was lawfully incurred by the Judgment-Debtors, for services rendered at their behest.

5. The Auctioneer states that he has applied for garnishee orders against the Respondents, and if the orders freezing the funds are not granted, the Respondents will empty their bank accounts, leaving the Auctioneer clutching at straws, in recovery of his costs. The application for garnishment will be rendered nugatory.
6. The 2nd and 3rd Respondents oppose the application. They filed Grounds of Opposition dated 21st August 2025. The principal ground, is that the Auctioneer's application, offends Sections 430 and 432 [2] of the Insolvency Act, 2015, and the principles governing companies under receivership, previously codified under Section 228 of the repealed Companies Act, Cap 486.
7. It is not contested that the 2nd Respondent, is under receivership. Receivership commenced prior to the present application.
8. The Auctioneer is prevented from executing against the 2nd Respondent, without the leave of the Court. The submission by the Auctioneer that the funds held by the 3rd Respondent may dissipate, is unsubstantiated.
9. Parties agreed to have the application considered and determined on the strength of their affidavits and submissions on record. They confirmed filing and exchange of submissions at the last mention before the Court, on 29th October 2025.

The Court Finds: -

10. The Auctioneer totally avoids submitting on insolvency, in his submissions dated 11th October 2025.
11. It is a fundamental omission. The Court agrees with the 2nd and 3rd Respondents, that the 2nd Respondent is a company under receivership.
12. It is not disputed that receivership preceded the application for garnishment.
13. Sections 430 and 432 of the Insolvency Act, 2015, require that once receivership is in place, legal proceedings can only be brought with the approval of the Court, against the company under receivership. This was underscored in **Sevani Brothers Company Kenya Limited & 4 Others v. Green Square Limited [2013] KEHC 1439 [KLR]**.
14. The 2nd and 3rd Respondents submit that, Section 430 of the Insolvency Act, provides that when a company is being liquidated, any attachment, distress or execution put in force against the company's property after commencement of liquidation, shall be void.
15. Parties are not clear in their submissions, if the 2nd Respondent is under receivership, or under liquidation, and whether the requirement for leave to execute, applies uniformly, both under receivership and liquidation.

16. The Applicant in particular, who seeks orders of garnishment, ought to have submitted on the subject.
17. In the end, the Court is persuaded by the position advanced by the 2nd and 3rd Respondents. The application for freezing of the 2nd Respondent's bank account is unsustainable.
18. The Auctioneer should proceed with execution against the 1st Respondent. He may also pursue recovery of his costs under the receivership or liquidations proceedings.

IT IS ORDERED: -

- a. *The application dated 8th August 2025 filed by the Auctioneer is declined.*
- b. *No order on the costs. ___*

Dated, signed and delivered electronically at Nakuru, this 19th day of December 2025.

James Rika
Judge.

