

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC APP NO E341 OF 2025
IN THE MATTER OF: ARTICLE 165(6) & (7) OF THE CONSTITUTION
OF KENYA 2010
AND
IN THE MATTER OF: SUPERVISORY JURISDICTION OF THE HIGH
COURT OVER THE SUBORDINATE COURTS AND TRIBUNALS
AND
IN THE MATTER OF: WARRANTS OF ATTACHMENT AND SALE
ISSUED BY THE SMALL CLAIMS COURT AT ELDORET IN SCCCOM
NO. 810 OF 2024
AND
IN THE MATTER OF: UNLAWFUL EXECUTION AGAINST
GOVERNMENT PROPERTY CONTRARY TO SECTION 21 OF THE
GOVERNMENT PROCEEDINGS ACT

BETWEEN

BOARD OF MANAGEMENT AIC LESERU BOYS HIGH SCHOOL.APPLICANT

VERSUS

JAYESH KUMAR PATEL T/A KINDO LAB ENTERPRISES

.....**1ST**

RESPONDENT

TOP LEAF AUCTIONEERS.....2ND

RESPONDENT

Coram: Before Hon. R. Nyakundi
Mr. Kwame State Counsel
M/s Kipkorir Rono & Co. Advocates

RULING

1. Before this Court is an Application dated 23rd October 2025 brought under Article 165(6) & (7) of the Constitution of Kenya 2010, Sections 1A, 1B & 3A of the Civil Procedure Act, Section 21 of the Government

Proceedings Act, and all enabling provisions. The Applicant moved this court seeking the following orders;

a. *Spent*

b. *Spent*

c. THAT the proclamation and/or execution proceedings commenced by the respondents be set aside.

d. This Honourable Court be pleased to call upon and review the proceedings in Eldoret Small Claims Court Case No. E810 OF 2024, particularly the issuance of warrants of attachment and sale of the Applicant's school bus, and set aside the said warrants forthwith. 5.

This Honourable Court be pleased to order the immediate release of the attached school bus Registration No. KBU 117T belonging to the Applicant. 6. Costs of this application be provided for.

2. The Application is made on the following grounds;

i. *THAT the Applicant is a public school and therefore a government institution.*

ii. *THAT Execution against government property is governed by Section 21 of the Government Proceedings Act (Cap. 40), which prohibits execution or attachment of government property in satisfaction of a decree.*

iii. *THAT the Small Claims Court issued warrants of attachment against the Applicant's school bus on 17th January 2025 without compliance with the mandatory provisions of Section 21 of the Government Proceedings Act.*

iv. *THAT the execution is therefore unlawful, irregular and amounts to abuse of the court process.*

v. *THAT The Applicant has not refused to satisfy the decree but requires compliance with the lawful procedure applicable to execution against government entities.*

vi. *THAT parties have executed a consent on the mode of payment of the decretal amounts.*

- vii. *THAT this Honourable Court has supervisory jurisdiction under Article 165(6) & (7) of the Constitution of Kenya to call for the record and review orders of subordinate courts and tribunals.*
 - viii. *THAT the warrants of attachment and sale, if not set aside, will disrupt the operations of the school and prejudice the public interest.*
 - ix. *THAT this Court has inherent jurisdiction to set aside any orders obtained by misrepresentation, concealment of material facts and/or abuse of process.*
 - x. *THAT it is in the interest of justice that the orders sought be granted to prevent further prejudice and embarrassment to the school, its learners and administration.*
3. The Application is supported by an Affidavit sworn and state as follows:
- i. *THAT I have read and understood the contents of the Notice of Motion Application herein and wish to depone in support thereto.*
 - ii. *THAT the 1st Respondent herein instituted the suit herein for breach of contract as against the applicant herein vide Eldoret Small claims case No. 810 of 2024.*
 - iii. *THAT the said matter proceeded ex parte and default judgement entered as against the applicant tune the tune of Kshs. 765,029 inclusive of the party and party costs.*
 - iv. *THAT in execution of the said decree the respondent instructed Jomuki auctioneers who took out warrants of attachment and sale of the applicant's movable property. (annexed hereto and marked WKM 1, 2 & 3 proclamation, warrant of attachment and sale of movable property)*
 - v. *THAT thereafter the judgement in default was set aside on condition that the applicant pays thrown away costs of Kshs. 15,000/= which unfortunately was not paid on time and the judgement in default reverted.*
 - vi. *THAT subsequently the Applicant engaged the 1st respondent with a view of liquidating the decretal amount in instalments.*

- vii. *THAT on 21st October 2025 the 2nd respondent acting on the 1st respondent's instructions attached the applicants motor vehicle registration No. KBU 117T and have since threatened to sell the same by way of public auction.*
- viii. *That the Applicant is a public school, established and managed under the provisions of the Basic Education Act (No. 14 of 2013) and is therefore a government institution for purposes of Section 21 of the Government Proceedings Act*
- ix. *THAT That the Applicant being a public institution, execution against its property is prohibited by Section 21 of the Government Proceedings Act.*
- x. *That no certificate of order against the Government has been served upon the relevant accounting officer as required by law.*
- xi. *That the attachment of the school bus is therefore irregular and unlawful.*
- xii. *That the Applicant stands to suffer irreparable prejudice as the bus is a crucial facility for transporting students.*
- xiii. *That it is in the interest of justice that this Honourable Court intervenes, calls up the proceedings, and sets aside the impugned warrants of attachment.*
- xiv. *That this application has been brought without unreasonable delay*
- xv. *THAT I swear this affidavit in support of the application for orders to stay and/or set aside execution of the decree of the trial court.*
- xvi. *THAT I make this affidavit conscientiously believing the same to be true and in accordance with the laws of Kenya.*

Decision

4. This matter is a subject of litigation before this court and the Applicant which is an Educational Institutional of Higher Learning moved the court in the matter of Article 165(6) & (7) of the Constitution of Kenya 2010. It was contended by the Applicant that the Warrants of Attachment and sale of property of the school by the Small Claims

Court at Eldoret was in contravention of Section 21 of the Government Proceedings Act.

5. The key principles of supervisory jurisdiction include inter alia;
 - a. *Constitutional powers donated by the Constitution itself to the High Court under Article 165(6 & 7) to superintend the inferior courts and tribunals which is distinct from review and appellate jurisdiction.*
 - b. *What is the purpose of this provision? The main project so as to keep subordinate courts ad tribunals within the bounds of their authority and ensure they proceed within the parameters of their jurisdiction. It is not meant for correcting mere laws or facts or to substitute the High Court's own decision for that of the inferior court or tribunal.*
 - c. *This powers under the constitutional imperatives is to be sparingly exercised and only in exceptional cases where there is a manifest miscarriage of justice, or on grave dereliction of duty or fragrant abuse of fundamental principles of law.*
 - d. *It is not an appellate power where the High Court is supposed to exercise appellate jurisdiction therefore it cannot re-appreciate or re-weigh the evidence presented before the subordinate court or tribunal.*
6. In this case the Applicant failed to discharge the burden of proof on supervisory jurisdiction with regard to the proceedings in the **Small Claims Court at Eldoret in SCCCOM No. 810 of 2024**. Therefore, the writ of certiorari shall not issue against the subordinate court.
7. Orders accordingly.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 7TH DAY OF JANUARY 2026

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**R. NYAKUNDI
JUDGE**