



**First Choice Auctioneers & another v Akwalu (Civil Appeal E489 of 2025)  
[2026] KEHC 604 (KLR) (Civ) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 604 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E489 OF 2025  
AC MRIMA, J  
JANUARY 29, 2026**

**BETWEEN**

**FIRST CHOICE AUCTIONEERS ..... 1<sup>ST</sup> APPELLANT**

**DAVID GITARI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**RICHARD LUMIRI AKWALU ..... RESPONDENT**

*(Being an appeal against the Ruling of Hon. W. Njagi (SPM) in Nairobi Milimani  
Chief Court Commercial Case No. E6644 of 2024 delivered on 30<sup>th</sup> April 2025)*

**JUDGMENT**

**Background:**

1. The appeal before this Court arose from the Ruling in the Nairobi [Milimani] Chief Magistrate's Court Commercial Case No. E6644 of 2024 (hereinafter referred to as 'the suit'). Before the Court was an application filed by the Respondent, Richard Lumiri Akwalu, seeking to set aside the attachment and sale of motor vehicle registration number KCD 517K (hereinafter referred to as 'the motor vehicle').
2. The execution process arose from a decree issued in Nairobi [Milimani] CMCC NO. 2912 of 2020 [hereinafter referred to as 'the original suit'] where judgment was delivered resulting in a decretal sum of Kshs. 535,140.60/-. Importantly, the warrants of attachment and sale were issued in December 2024. The Warrant of Sale directed, First Choice Auctioneers, the Appellants herein, to sell the judgment debtor's property after giving 15 days' notice. The motor vehicle was attached on 4<sup>th</sup> November 2024, while on the road. It was subsequently sold on 12<sup>th</sup> November 2024. Aggrieved, the Respondent



instituted the application dated 28<sup>th</sup> November 2024 on the premise that the auction process was illegal.

3. In its Ruling, the Learned Magistrate agreed with the Respondent, a decision that aggrieved the Appellants, hence the instant appeal.

#### **The Appeal:**

4. Through a Memorandum of Appeal dated 30<sup>th</sup> April 2025, the Appellants sought to set aside the Ruling of the trial Court on the following grounds;
  1. The learned trial magistrate erred in law and in fact in finding that the 15 days' notice for sale of moveable property is required instead of the 7 days' notice as per rule 12 (i) (I) of the Auctioneers rules.
  2. The learned trial magistrate erred in law and in fact in finding that the subject motor vehicle KCD 517K to be returned to the Respondent knowing that the subject motor vehicle was already sold to the third party who was a bonafide purchaser for value.
  3. The learned magistrate erred in law and in fact in failing to consider the appellants submissions showing substantially that the execution process was followed to the letter
  4. The Learned trial Magistrate misdirected himself in failing to make a finding in favour of the Appellants given the fact that the application itself was overtaken by events.
  5. Consequently, the learned magistrate decision occasioned a miscarriage of justice.

#### **The Submissions:**

5. In their written submissions dated 3<sup>rd</sup> June 2025, the Appellants argued that the trial Magistrate erred in finding that a fifteen-day notice was required for the sale of movable property. It was their contention that they had strictly followed the seven-day notice requirement outlined in Rule 12 of the Auctioneers Rules. Regarding the legality of the attachment, it was their case that they issued a Proclamation of Attachment on 18<sup>th</sup> October 2024, and allowed a grace period of sixteen days before removing the vehicle on November 4, 2024. To support their position that the process constituted a valid attachment, they relied on National Industrial Credit Bank Limited -vs- S. K. Ndegwa Auctioneer [2005] KECA 1 (KLR), where the Court of Appeal defined proclamation and held that once goods are proclaimed under Rule 12(b) and the prescribed procedure is followed, the process of attachment takes effect and the goods become seized by the law.
6. The Appellants further contended that the Respondent's application, filed on 28<sup>th</sup> November 2024, was overtaken by events and maliciously instituted, as the vehicle had already been sold to the 2<sup>nd</sup> Appellant on 12<sup>th</sup> November 2024. They argued that the 2<sup>nd</sup> Appellant was a bona fide purchaser for value and that the execution process was already complete before the Respondent sought Court intervention. In asserting their adherence to the Auctioneers Rules regarding the sale of movable properties. they referred to the case of Syrilla A. Barasa & 2 others -vs- Margaret Aseka Barasa [2022] KEHC 1443 (KLR).
7. In the end, the Appellants prayed that the trial Court's ruling be set aside and that the costs of the appeal be borne by the Respondent.



### **The Respondent's case:**

8. The Respondent, through written submissions dated 16<sup>th</sup> July 2025, opposed the appeal in its entirety. It was his case that the warrants of attachment and sale were self-explanatory since it ordered fifteen days' notice of sale after due proclamation and attachment. He argued that the foregoing sale was not merely a movable property sale, but one sanctioned and tailored by the warrants, meaning the auctioneer was bound to adhere to the orders of the Court.
9. The Respondent asserted that the vehicle was of a higher value than what was realized, noting the market value was over 1 million Kenya shillings, yet the sale could not satisfy the decree of Kshs. 535,140.60. He claimed that the sale at a throw-away price was calculated to deprive him of his property. The Respondent maintained that he had a right to notification of sale to allow him fifteen days before the fall of the hammer to redeem his property, and failure to give this notice rendered the sale null and void. He further pointed out that the auctioneer attached a valuation report, dated 16<sup>th</sup> November 2024, a period of four days after the sale, in an attempt to justify the vehicle's value.
10. In challenging the claim that the case was moot, the Respondent submitted that the application was not overtaken by events because the motor vehicle was still registered in his name and the sale was an illegality that could not transfer title. He relied on Article 40 of *the Constitution* concerning the right to acquire and own property and protection against arbitrary deprivation. He drew support from the authority in Civil Case Number E843 of 2021, Harrogate Limited -vs- Mwananchi (2023) to emphasize the necessity of integrity and adherence to the law in the auction process.
11. He urged this Court to dismiss the appeal with costs.

### **Analysis:**

12. Having keenly traced the origin of the dispute, the grounds of appeal as well as the parties' rival arguments, the issues that emerge for determination are as follows: -
  - i. The regularity of the execution process in view of the timelines prescribed by the Warrants of Sale.
  - ii. The validity of the sale.
  - iii. Whether the sale was overtaken by events.
13. Next is a consideration of the above issues, but, first, the role of this appellate Court. The role of this Court as a first appellate Court was set out in the well-established case of *Selle -vs- Associated Motor Boat Company Ltd* [1968] E.A. 123, as follows: -

.... An appeal from a High Court is by way of rehearing and the Court of Appeal is a first appellate court. It is not sufficient to merely scrutinize the evidence and say whether the trial Judge was right or wrong. An appellate court is not bound to accept the trial Judge's findings of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of the demeanour of a witness is inconsistent with the evidence generally.
14. Having set out the Court's appellate role, I now address the issues.



**(a) The regularity of the execution process in view of the timelines prescribed by the Warrants of Sale:**

15. This is the central issue in the appeal. The Appellants relied on the minimum 7-day period under the Auctioneers Rules. Due to its centrality, I find it appropriate to reproduce it. It provides;

12. Movable other than perishable goods and livestock.

Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—

a ...

b ...

c. In writing, give to the owner of the goods seven days' notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;

f. arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter;

16. I have keenly perused the subject Warrant of Sale of Property dated 4<sup>th</sup> December 2024. It directed the Auctioneer to sell only after giving 15 days' notice. Auctioneers are officers of the Court. Their mandate, namely; the execution of Court Orders, constitute an important component in the administration of justice. As such, their mandate must strictly be within the bounds sanctioned by a Court. On the other hand, the interpretation of the law and its application is a mandate constitutionally bestowed upon Courts. It is not the place of Auctioneers to take the law upon themselves and purport to apply it. Even worse is when such conduct is contrary to an express order of the Court. It is contemptuous of the authority of the Court and a fetter on the concept of discretion which allows Courts to apply the law based on the dynamics of a case in order to do justice between the parties.

17. Drawing from the foregoing, the period prescribed within the warrant superseded the general minimum period prescribed by the Auctioneers Rules. The learned trial magistrate had reasons and exercised discretion to enlarge the time beyond 7 days. As an executing officer, the Auctioneer was mandated to follow the specific instructions contained within the judicial instrument directing the sale. Therefore, irrespective of the provision of the Auctioneers Rules, the sale suffered a material procedural irregularity. It culminated in material breach of the Court's own orders which cannot be sanctioned by this Court.

18. This Court, therefore, finds that the execution of the warrants was against an Order of the Court.

**(b) The validity of the sale:**

19. Beyond the inadequate notice period as highlighted in the preceding issue, the Respondent's contest regarding valuation were pertinent. He demonstrated that the vehicle was sold at a price that could not even cover the decree, despite its alleged value exceeding Kshs. 1 million. The valuation report, by Stantec Automobiles Valuers and Assessors Limited, relied upon by the Appellants, attests to the fact that it was secured on 16<sup>th</sup> November 2024, four days after the actual sale.

20. Rule 16(f) of the Auctioneers Rules provides as follows;

16. Advertisement



1. An advertisement by an auctioneer shall, in addition to any other matter required by the court, contain—
  - a. the date, time and place of the proposed sale;
  - b. in respect of movable property other than perishable goods and livestock, an accurate description of the goods to be sold and a statement as to whether or not they are to be sold subject to a reserve price;
21. Since there was neither reserve price nor reasons for lack thereof, there is merit in the Respondent’s claim that the post-facto valuation undermined the procedural requirement that obligated the Appellant to set a fair reserve price before the sale. The sale yielded an arbitrary deprivation of the right to property contrary to Article 40 of *the Constitution*. In view of the claimed undervaluation, and post-facto valuation, the execution cannot be given a stamp of approval by this Court. As I come to the end of this issue, I must clarify that even if it were that the trial Court erred in giving the 15 days’ notice of sale as opposed to the 7 days statutorily decreed, [which it did not as it had the discretion to enlarge time], still the sale would still be caught up by the foregoing fundamental illegalities.
22. The sale was, hence, a nullity.

**(c) Whether the sale was overtaken by events:**

23. The Appellants argued that the sale to the 2<sup>nd</sup> Appellant rendered the application moot. However, the Respondent’s argument that an illegality cannot transfer title is meritorious.
24. In view of the material irregularities, the ensuing sale could not confer valid title. Consequently, the application could not have been overtaken by events. The learned trial Magistrate was justified in intervening to protect the debtor’s property rights guaranteed by law.

**Disposition:**

25. As I come to the end of this decision, I wish to sincerely apologize for the late delivery of this decision. The delay was largely caused by my engagement at the Judicial Service Commission where I sit as a Commissioner.
26. For the foregoing reasons, this Court is satisfied that the learned trial Magistrate correctly identified the procedural lapses in the execution process and issued the appropriate remedy. The appeal is merited.
27. Accordingly, the following final orders hereby issue: -
  - (a) The Appeal is hereby dismissed in its entirety.
  - (b) For avoidance of doubt, the Ruling and attendant orders of trial Court of 30<sup>th</sup> April 2025, are upheld and affirmed.
  - (c) The costs of this appeal shall be jointly and severally borne by the Appellants.Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JANUARY, 2026.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:



Miss Ruguru, Learned Counsel for the Appellants.

Miss Muindi, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

