



**Lubulellah & Associates v Maasai Mara University; Vintage Auctioneers
& 5 others (Proposed Interested Parties) (Miscellaneous Application
E132 of 2022) [2026] KEELRC 267 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 267 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E132 OF 2022
BOM MANANI, J
FEBRUARY 2, 2026**

BETWEEN

LUBULELLAH & ASSOCIATES ADVOCATE

AND

MAASAI MARA UNIVERSITY RESPONDENT

AND

VINTAGE AUCTIONEERS PROPOSED INTERESTED PARTY

AMEELI INVESTMENTS LTD PROPOSED INTERESTED PARTY

SUSAN NJERI MWANGI PROPOSED INTERESTED PARTY

**NATIONAL TRANSPORT SAFETY AUTHORITY PROPOSED
INTERESTED PARTY**

ATTORNEY GENERAL PROPOSED INTERESTED PARTY

**CABINET SECRETARY, MINISTRY OF EDUCATION PROPOSED
INTERESTED PARTY**

RULING

1. On 16th February 2023, the Taxing Master of the court assessed the Advocate’s Advocate-Client Bill of Costs dated 16th August 2022 at Ksh. 1,297,557.56. The Advocate subsequently filed the application dated 7th August 2024 through which he prayed for judgment for the above amount as per the Certificate of Taxation dated 17th February 2023.
2. By a consent letter dated 14th October 2024 and filed in court on 16th October 2024, the parties allowed the application dated 7th August 2024 and entered judgment for the Advocate for the sum of Ksh.



1,297,557.56 together with interest thereon at the rate of 14% per annum from 19th August 2022. In addition, they agreed on costs of the application in the sum of Ksh. 20,000.00 in favour of the Advocate. That agreement was adopted as an order of the court on 17th October 2024.

3. On 25th August 2025, the Respondent filed the application dated 21st August 2025 under Certificate of Urgency. It sought for the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That the court does join Vintage Auctioneers as Interested Parties to the action.
 - d. That pending the hearing of the application, the court issues an order of interim injunction to restrain the Advocate and the Interested Party from transferring and or further transferring, alienating, disposing of, registering, encumbering or otherwise interfering with the Applicant's (Respondent's) motor vehicles registration numbers KCP 274K and KDA 139P.
 - e. That pending the hearing and determination of the application the court does issue a stay of completion of the purported sale which emanated from the unlawful auction conducted on 12th August 2025, transfer and or any other dealings on the Applicant's (Respondent's) motor vehicles registration numbers KCP 274K and KDA 139P.
 - f. That pending the hearing and determination of the application, the court be pleased to stay, suspend and reverse the sale and intended transfer of the subject motor vehicles.
 - g. That upon hearing and determination of the application, the subject motor vehicles in the custody of the Respondent (Advocate) and Interested Party be discharged back to the Applicant (Respondent).
 - h. That upon hearing and determination of the application the court be pleased to stay, suspend and reverse the transfer of the subject motor vehicles.
 - i. That the court be pleased to direct the specific performance of the settlement agreement between the Applicant (Respondent) and Respondent (Advocate).
 - j. That the court be pleased to direct the National Transport and Safety Authority (NTSA) to forthwith place an inhibition, restriction and or caveat against any dealings, transfer, encumbrance or alteration of ownership particulars in respect of the logbooks of the aforesaid vehicles pending the hearing and determination of the application.
 - k. That the court be pleased to issue such further or consequential orders as may meet the ends of justice.
 - l. That the court gives directions on costs of the application.
4. The application is based on the grounds on the face of it. It is also reinforced by the supporting affidavit dated 21st August 2025.
5. Essentially, the Respondent contends that after the parties agreed on the decretal sum in the cause, they entered into an agreement through which it (the Respondent) was to pay the amount by instalments. The Respondent contends that pursuant to this agreement, it made some payments to the Advocate.
6. The Respondent contends that the payment plan which the parties entered into gave it legitimate expectation that the decretal sum was to be paid as per the plan. As such, it contends that the Advocate was estopped from unilaterally repudiating the arrangement and executing for the amount.



7. The Respondent asserts that contrary to this arrangement, the Advocate instructed M/S Vintage Auctioneers to attach and sale its property in purported execution for the decretal amount. It contends that following this development, the Auctioneers attached and sold its (the Respondent's) motor vehicles registration numbers KCP 274K and KDA 139P.
8. The Respondent contends that immediately the aforesaid motor vehicles were attached, the Advocate asked the auctioneers to halt the process. Despite this, it avers that the Auctioneers proceeded to dispose of the vehicles by way of public auction. As such, the Respondent contends that the said attachment and sale of the vehicles was unlawful as it violated the provisions of the Auctioneers Act, 1996 and the Auctioneers Rules, 1997.
9. The Respondent accuses the Auctioneers of failure to record the proper value and condition of the attached vehicles in the proclamation form thus causing them to be grossly undervalued. It contends that this omission contravened rule 12(b) of the Auctioneers Rules.
10. The Respondent further contends that the Auctioneers hurriedly conducted the impugned auction at a price that was manifestly below the market price for the suit motor vehicles. As a result, it contends that this caused it extreme financial prejudice whilst unjustly enriching the purchasers at the auction.
11. The Advocate has opposed the application. He filed a replying affidavit dated 11th September 2025.
12. The Advocate contends that the application is without merit. He contends that once the court entered judgment in the matter, it became functus officio.
13. The Advocate avers that the execution process was concluded on 12th August 2025 when the auction sale for the suit motor vehicles took place. As such, he contends that the matter is closed and the court cannot re-open it.
14. The Advocate avers that the court did not issue stay of execution orders after it entered judgment in the cause. He further denies that the parties negotiated and entered into a payment plan for the decretal sum prior to the attachment and sale of the suit motor vehicles.
15. The Advocate avers that he indulged the Respondent several times by halting the execution process but that this was met by failure by the Respondent to make good its promises to pay the decretal sums. As such, he contends that the Respondent's actions were intended to delay finalization of the matter.
16. The Advocate contends that he offered to halt the execution process on the understanding that the Respondent was going to settle the matter by the close of July 2025. However, he avers that the Respondent did not settle the claim resulting in the impugned sale of the attached motor vehicles.
17. The Advocate contends that the Auctioneers proceeded to sale the attached motor vehicles at midday on 12th August 2025. He contends that the Respondent's letter dated 12th August 2025 reached him on 14th August 2025, two days after the impugned sale had taken place.
18. The Advocate contends that he had every right to enforce payment of the decretal amount through attachment and sale of the Respondent's property. He contends that the Respondent was not entitled to dictate the mode of payment of the outstanding amount under the decree.
19. The Advocate contends that the Respondent's attempts to stop the execution process are belated and overtaken by events since the auction sale took place on 12th August 2025. As such, he contends that the Respondent has no right to impose on him a belated payment proposal after the auction sale.
20. The Advocate states that the 2nd and 3rd proposed Interested Parties purchased the suit vehicles on the auction day and made full payments for them. He further contends that the said proposed Interested



- Parties took possession of the vehicles on that day. As such, it is his case that the sale was completed the moment the 2nd and 3rd proposed Interested Parties gave valuable consideration for the vehicles and cannot be reversed.
21. The Advocate contends that the Respondent's representative called him on 12th August 2025 at 1.30 PM regarding the proposal for payment contained in its letter of even date. He avers that on this date, he was out of the office attending a conference. He contends that at the time the Respondent's team called him, the Auctioneers had already finalized the sale at 12.00 PM that day.
 22. The Advocate avers that the Respondent eventually sent him the letter dated 12th August 2025 by email on 14th August 2025. He avers that the letter thus came too late.
 23. The Advocate contends that the Respondent forwarded part payment of the decretal sum together with the proposed payment plan after the auction had already taken place. He questions the Respondent's motive for this belated action.
 24. The Advocate contends that the attached motor vehicles were advertised in the local dailies on 9th and 14th July 2025 and on 5th August 2025. Despite this, he contends that the Respondent did not take any steps to settle the matter. As such, he accuses the Respondent of indolence.
 25. The Advocate contends that the Respondent refused to make a payment proposal despite being indulged severally. As such, he contends that the Respondent has approached the court with unclean hands and that equity should not come to its aid.
 26. The Respondent filed a second application dated 5th September 2025 in which it seeks a plethora of reliefs to wit: an order to certify the motion as urgent; an order to admit the motion for hearing during the court's vacation; an order to join Vintage Auctioneers, the Attorney General and the Cabinet Secretary, Ministry of Education as parties to the action; an order directing the Directorate of Criminal Investigations (DCI), Narok County Headquarters to trace, secure, investigate and establish the whereabouts of motor vehicles registration numbers KCP 274K and KDA 139P and to report to court within seven days; an order directing the National Transport and Safety Authority (NTSA) to place and or register a caveat and or restriction against motor vehicles registration numbers KCP 274K and KDA 139P in order to prevent their transfer, licensing or registration to third parties; an order directing the Government Check Unit to impound, seize and take custody of motor vehicles registration numbers KCP 274K and KDA 139P and to hold them in safe custody; a conservatory order to bar the Advocate and Vintage Auctioneers and the purchasers of the above motor vehicles from tampering with, dismantling, concealing or using the said vehicles; an order consolidating the application with the earlier application dated 21st August 2025; and an order for costs.
 27. The application is supported by the grounds appearing on the face thereof and the affidavit dated 5th September 2025. The Respondent reiterates that the two motor vehicles belong to it but were irregularly sold by the Advocate and Vintage Auctioneers through auction. It contends that the sale was at undervalue, a fact which it contends demonstrates the illegality of the process.
 28. The Respondent contends that although the court issued an order for stay of execution on 26th August 2025, this did not assist it to locate the suit motor vehicles. As such, it contends that the said vehicles remain unaccounted for and are exposed to the risk of being concealed, dismantled and or transferred to third parties.
 29. The Respondent contends that the suit motor vehicles are public property which were acquired through taxpayers' funds. As such, it contends that it is in the wider interest of the public to secure



- them. Consequently, it contends that DCI Narok and the Government Check Unit should be directed to trace and impound the vehicles and the NTSA should be ordered to place caveats on them.
30. In response, the Advocate filed Grounds of Opposition dated 28th October 2025. He contends that the second application is without merit and is an abuse of the court process.
 31. The Advocate contends that joining the proposed parties to the action is unnecessary since neither he nor the Respondent is seeking any orders against them. He contends that the Respondent has not demonstrated that the presence of the proposed parties is essential for the effective resolution of the issues between the parties to the suit.
 32. The Advocate contends that the Respondent is a body corporate with perpetual succession and a common seal and with the power to sue and be sued in its corporate name. As such, he avers that there is no need to bring the Attorney General or indeed any other Government official on board the matter.
 33. The Advocate states that the motion is in any event overtaken by events since the suit motor vehicles were sold to innocent third parties for value at a public auction. He contends that the Respondent has not joined the purchasers to the action yet, they are entitled to be heard in the matter.
 34. The Advocate contends that a sale at a public auction is deemed complete at the fall of the hammer. As such, he contends that the equity of redemption is extinguished at that time.
 35. On 11th September 2025, a third application dated 10th September 2025 was filed on behalf of Ameeli Investment Limited and Susan Njeri Mwangi. Through the motion, it is sought that the two individuals and the Director General of the National Transport and Safety Authority (NTSA) be made parties to the action. It is further sought that: the Respondent's application dated 21st August 2025 be struck out; all and any caveats lodged on motor vehicle registration numbers KDA 139P and KCP 678K be removed unconditionally; the NTSA be directed to register the transfer of the two vehicles to Ameeli Investment Limited and Susan Njeri Mwangi; and the court to give directions on the costs of the application.
 36. The application is supported by the grounds on the face thereof and the affidavit dated 10th September 2025. The applicants in the motion (Ameeli Investment Limited and Susan Njeri Mwangi) assert that they lawfully purchased motor vehicles registration numbers KDA 139P and KCP 678K at a public auction on 12th August 2025. They contend that the auction was publicized in local dailies as required by law. They thus contend that they are purchasers for value and have become the lawful owners of the two vehicles.
 37. The applicants in the motion contend that the Respondent in the suit has maliciously registered a caveat against the two vehicles thus making it impossible for them to process transfer of the vehicles into their names. As such, they pray that the caveat be lifted.
 38. The Respondent has opposed the application. It has placed on the court file a brief affidavit dated 2nd November 2025 to anchor its objection to the motion.
 39. However, there is no indication that the Respondent paid court filing fees for the affidavit. A cursory look at the affidavit shows that zero filing fees was paid for it. As such and if this be the case, the affidavit is technically not filed with the consequence that the Respondent has technically not opposed the motion dated 10th September 2025.
 40. Be that as it may, the Respondent's contention in the affidavit is that the application dated 10th September 2025 is premature since there are other applications which are pending. The Respondent contends that the rulings on the pending applications will determine the course to be taken in the



aforesaid motion. As such, it prays that the motion be stayed or be heard together with the earlier applications.

41. Besides the foregoing, the Respondent makes no other averments in the affidavit on the motion dated 10th September 2025. Yet, in its submissions on the application, it raises matters which have not been raised in the affidavit. As will be seen later in the ruling, this observation is critical as it will inform the position the court will take on the admissibility of the impugned submissions on the motion.
42. On the Advocate's part, he did not file a response to the motion of 10th September 2025. On the contrary, he submitted in support of it.

Analysis

43. It is perhaps important to commence the review of the various applications by speaking to the subject matter of the dispute. According to the Respondent's applications, the dispute relates to two motor vehicles which it indicates as KCP 274K and KDA 139P. Yet, the logbooks that it (the Respondent) has attached to the affidavit in support of the motion dated 21st August 2025 relate to motor vehicles registration numbers KCP 678K and KDA 139P
44. Further, the proclamation form which the Respondent has attached to the application dated 21st August 2025 shows that motor vehicles registration numbers KDA 139P and KCP 678K were among the various items that were proclaimed. However, motor vehicle registration number KCP 274K is not in the list.
45. In the Advocate's response to the application dated 21st August 2025, he has attached Certificates of Sale for motor vehicles registration numbers KCP 678K and KDA 139P. There is no Certificate of Sale for motor vehicle registration number KCP 274K.
46. In the application dated 10th September 2025, the Applicants (Ameeli Investment Limited and Susan Njeri Mwangi) state that they purchased motor vehicles registration numbers KCP 678K and KDA 139P at the public auction of 12th August 2025. They do not contend that they purchased motor vehicle registration number KCP 274K.
47. In the application dated 5th September 2025, the Respondent alludes to motor vehicles registration numbers KCP 274K and KDA 139P. There is no mention of motor vehicle registration number KCP 678K.
48. It is therefore apparent that the Respondent has not challenged the sale of motor vehicle registration number KCP 678K in the motions dated 21st August 2025 and 5th September 2025. It is so declared.
49. Although the Respondent has challenged the sale of motor vehicle registration number KCP 274K, it has not presented cogent evidence to demonstrate that the said vehicle was the subject of sale at the public auction that was conducted on 12th August 2025. It was up to the Respondent to present evidence to demonstrate that the said motor vehicle was the subject of the auction of 12th August 2025 to enable the court to inquire into the validity of the alleged sale. Until this is done, the court cannot legitimately deliberate on the purported sale. Absent the aforesaid evidence, it will be speculative for the court to presume that the vehicle was sold at the auction and to grant orders to nullify the alleged sale. As such, it (the court) declines to issue any orders in respect of this particular vehicle (KCP 274K) since such order will be in vain.
50. Be that as it may, the thrust of the Respondent's case is that the Advocate and the Auctioneers were not entitled to sell motor vehicles registration numbers KCP 274K and KDA 139P in enforcement of the decree in the Advocate's favour since the parties to the claim had already entered into an agreement



regarding how to settle the decree. The Respondent contends that it even made part payment of the decretal sum to the Advocate pursuant to the agreement.

51. On the other hand, the Advocate denies that there was such arrangement between the parties. He contends that the Respondent purported to make part payment of the decretal sum after the auction of 12th August 2025 had taken place
52. Although the Respondent alludes to an agreement between the parties through which it was to pay the decretal amount, it did not provide proof of such agreement. It did not annex a copy of the alleged agreement to the application.
53. All that it (the Respondent) provided are email correspondence between the parties in the month of July 2025 which show that the Advocate committed to have the vehicles released once they entered into a consent setting out a payment plan for the decretal sum. However, there is no evidence that such consent was ever recorded.
54. Absent evidence of an agreed payment plan, the court is unable to agree with the Respondent's contention that the parties had an agreement through which the Respondent was to pay the decretal sum. Therefore, it (the court) finds that there is no proof that by conducting the impugned sale to recover the decretal amount, the Advocate acted in breach of an agreement between the parties.
55. The court also notes from the annexures on the Respondent's application dated 21st August 2025 that the part payment it made pursuant to the alleged settlement agreement was done on 20th August 2025 (see annex MMU 3b). This was long after the impugned auction had taken place on 12th August 2025. As such, the Respondent cannot legitimately accuse the Advocate of having proceeded with the impugned sale despite having received part payment of the decretal sum.
56. The Respondent does not deny that at the time of the impugned attachment, it was indebted to the Advocate pursuant to the decree in the cause. The *Civil Procedure Act* and Rules permit attachment and sale of a Judgment Debtor's assets in order to satisfy an outstanding decree (see sections 38 (b) and 44 of the *Civil Procedure Act* and Order 22 rule 37 of the Civil Procedure Rules).
57. Therefore, it must be underscored that execution of a decree is a lawful process (*Barasa v Nambale* [2025] KEHC 4986 (KLR)). As such, the court finds that it was not unlawful for the Advocate to apply for the attachment and sale of the Respondent's movable assets in a bid to satisfy the decree in the cause.
58. The Respondent has questioned the validity of the impugned auction on the ground that the Auctioneers sold the suit motor vehicles at undervalue. Therefore, it contends that the sale was illegal.
59. It is noteworthy that the Respondent's contention is not premised on the value of the motor vehicles at the time of the auction in August 2025. It relies on valuation of the suit vehicles which was done in March of 2025.
60. The law entitled the Respondent to apply to court to ascertain the true value of the vehicles before the impugned auction. Rule 10 of the Auctioneers Rules which addresses the matter provides as follows:-

"A debtor may, at any time before the property seized or repossessed is sold, apply to a court for an order that the property be valued by an independent valuer."
61. After the Auctioneers attached the suit motor vehicles, they advertised them for sale through local dailies. As such, the Respondent is deemed to have been aware of the impending sale.



62. There is no evidence that prior to the impugned auction, the Respondent contested the value which the Auctioneers had assigned to the vehicles. There is no evidence that it (the Respondent) applied for valuation of the vehicles prior to the sale in line with the law. As such, the contention that the vehicles were sold at undervalue, in so far as it is not based on a valuation that was carried out by an independent valuer before the impugned sale, is not supported by independent evidence.
63. The fact that a third party alleged through some online platform that one of the vehicles was valued between fifteen and twenty million Kenya Shillings is not evidence that this was the actual value of the vehicle at the time it was auctioned. The value of the vehicle could only have been ascertained by a qualified motor vehicle assessor. In *Fitzgerald v Muganda Wasulwa t/a Keysian Auctioneers* [2024] KEHC 9390 (KLR), the court underscored this reality by stating that the true value of a vehicle can only be ascertained by a qualified valuer.
64. In any event, the Respondent did not raise the issue of the online valuation of the vehicles in the affidavits in support of the applications under consideration. This matter was only raised through its submissions which is impermissible since submissions are not evidence (*Gudka & another v Roitei* [2025] KEELC 8091 (KLR)).
65. Under section 58 (1) (b) of the *Sale of Goods Act*, a sale of goods through auction is deemed as complete at the fall of the hammer. The provision states as follows:-
- “In the case of sale by auction a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner.”
66. In the instant suit, the Advocate states that the auction was completed at midday on 12th August 2025. Indeed, he has provided Certificates of Sale which affirm the fact that the two vehicles (KDA 139P and KCP 678K) were sold on 12th August 2025. As such, the sale in respect of the two vehicles was completed at the fall of the hammer at midday on 12th August 2025.
67. The consequence of the above is that the buyers of the two vehicles acquired good title to them on completion of the impugned sale. As such, the instant applications are overtaken by events and the court is not entitled to reverse the sale to the buyers’ detriment.
68. In *Kimondo & another v Progressive Credit Ltd (Civil Appeal 49 of 2023)* [2025] KEHC 7297 (KLR) (21 May 2025) (Ruling) and *Murunga v Barasa* [2024] KEHC 676 (KLR), the courts declined to stay the sale of the motor vehicles that were in contention because at the time of the applications for stay, the vehicles had already been sold. The courts observed that the requests for stay were overtaken by events.
69. I am persuaded that the position expressed by the courts on the subject in the aforesaid cases is the correct one. Consequently, I find that by the time the Respondent was moving the court for stay of sale, the request had been overtaken by events as the vehicles had already been sold at the time.
70. The Respondent has not presented any evidence to suggest that the buyers of the vehicles were aware of any factors which would vitiate the auction sale as they took part in the sale. On the contrary, there is evidence that the auction had been advertised in line with the law. As such, the court finds that the buyers stand in the position of purchasers for value without notice of any defect in title of the goods that were sold.
71. The law entitles the Respondent to sue the Auctioneers for damages for any loss it has suffered if it considers the sale to have been irregular. However, it appears that the Respondent can only do so



through a separate and substantive action or suit but not through these proceedings. This reality is discernible from section 26 of the *Auctioneers Act* which provides, in part, as follows:-

“Subject to the provisions of any other written law, a person who suffers any special or general damages by the unlawful or improper exercise of any power by a licensed auctioneer shall be entitled to recover any damages directly suffered by him from the auctioneer by action.”

72. Black’s Law Dictionary defines the term ‘action at law’ as follows:-

“A civil suit stating a legal cause of action and seeking only a legal remedy.”

73. Section 26 aforesaid requires an aggrieved party to seek relief from the offending Auctioneer by ‘action.’ Having regard to the definition of the term ‘action at law’ as aforesaid, it is the court’s view that if the Respondent believes that the Auctioneers acted beyond the scope of their authority and the law in selling the impugned motor vehicles, the proper procedure would be to institute suit for damages against them. As such, it is doubtful that the Respondent is entitled to apply for the orders it seeks through the instant miscellaneous motion as it has done.

74. Indeed, in the case of *Jacob Ochieng’ Muganda v Housing Finance Company of Kenya Limited* [2002] KECA 109 (KLR), the Court of Appeal alluded to this matter when it observed as follows:-

“The property was knocked down at a public auction. If there was any irregularity in the conduct of the auction the applicant would be entitled for damages against the auctioneer pursuant to section 26 of the *Auctioneers Act* which provides that subject to the provisions of any other law, a person who suffers any special or general damages by the unlawful or improper exercise of any power of a licensed auctioneer shall be entitled to recover any damages directly suffered by him from the auctioneer by action.”

75. Further, Order 22 rule 65 of the Civil Procedure Rules provides that an auction sale for movable property cannot be vitiated because of irregularities in the process of the auction. However, any person who is affected by the irregularity may seek compensation from the offending party through a separate civil action.

76. The only window which the provision creates for recovery of the auctioned property from the purchaser is if it is demonstrated that the purchaser was aware of and party to the irregularities that were committed in the auction sale. However, this still has to be through an independent action. The provision states as follows:-

“No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.”

77. That a party who is aggrieved by an auction sale should seek to remedy the grievance through an independent suit appears to be affirmed by the authorities cited by the Respondent’s Counsel. For instance, in *Fitzgerald v Muganda Wasulwa t/a Keysian Auctioneers* [2024] KEHC 9390 (KLR), the impugned auction was challenged through an independent action which was filed against the auctioneers.



78. In the instant case, the Respondent did not tender affidavit evidence to demonstrate that the buyers of the suit motor vehicles committed any irregularities during the impugned auction. The Respondent did not speak to this fact in its affidavits in support of the applications dated 21st August 2025 and 5th September 2025. Neither did it accuse the buyers of any impropriety in the auction in the affidavit in response to the buyers' application dated 10th September 2025.
79. The only time the Respondent alleged impropriety against the buyers was through its submissions. However and as will be mentioned later, submissions cannot serve as a substitute for affidavit evidence.
80. The Respondent contends that the motor vehicles in question are public property which should not have been attached. However, the Advocate contends that the Respondent is a corporate body with power to sue and be sued in its own name and with the duty to fulfil its obligations in law. He contends that the Respondent does not enjoy the insulation that is granted to Government under section 21 of the *Government Proceedings Act* and is thus amenable to the process of execution through attachment and sale of its property.
81. The court has looked at Legal Notice No. 226 of 2013 which contains the Charter which established the Respondent. Section 3 of the instrument set up the Respondent as a body corporate with the powers to sue, be sued, acquire, hold and dispose of property in its own name. As a body corporate, the Respondent is bound to satisfy its obligations in law, including payment of lawful debts.
82. There is nothing in the Charter to suggest that the Respondent enjoys immunity from lawful execution proceedings when it fails to fulfil its obligations under lawful decrees. As such, there is no basis for it to contend that the Advocate was not entitled to attach and sale the vehicles in question to satisfy the decree which had issued in his favour.
83. As I finalize on the Respondent's applications, it is necessary to address various other matters which it has raised. It is noteworthy that some of these matters were raised for the first time through the Respondent's submissions without having been alluded to in the applications under consideration.
84. First, the Respondent contends that the Auctioneers sold the suit vehicles without instructions from the Advocate. To support this contention, it refers to the email exchanges between the Advocate and the Auctioneers through which the Advocate asked the Auctioneers to halt the execution process as the parties sought to record a consent on payment of the decretal sum. Based on this correspondence, the Respondent contends that the impugned sale was illegal.
85. I have looked at the emails in question and it is clear to me that all that the Advocate told the Auctioneers was that they were to call off the execution once the parties to the action recorded a consent on payment of the decretal sums. According to the emails, this was supposed to have been done by close of July 2025.
86. In the Advocate's email to the Respondent dated 17th July 2025, the Advocate was categorical that the instructions to the Auctioneers to halt action were conditional on the parties entering into a consent for payment of the decretal sum and the Respondent paying the Auctioneers' fees. The Advocate underscored the fact that these two conditions had not been met by the Respondent. He concluded by asking the Respondent to provide a tangible payment plan to forestall the execution process. It is noteworthy that the email was copied to the Auctioneers.
87. There is nothing to suggest that the Respondent had complied with the Advocate's demand at the close of July 2025. Therefore, the Advocate's instructions to the Auctioneers to halt the execution process lapsed on account of effluxion of time and failure by the Respondent to comply. As such, it is



erroneous for the Respondent to contend that the Auctioneers proceeded to sell the vehicles against the Advocate's instructions.

88. It is noteworthy that the Advocate subsequently wrote to the Auctioneers on 12th August 2025 at 2.00 PM asking them to halt the execution process once again as the parties attempted to discuss the matter. However, as he has explained in his letter to the Respondent dated 20th August 2025, this communication went out to the Auctioneers after the auction had already been concluded at midday on that same day.
89. Second, the Respondent asserts that the suit vehicles should not have been attached because they are part of its tools of trade. Yet, this contention was not raised in the affidavits in support of the applications under consideration. It was raised for the time through the Respondent's submissions.
90. It is trite that parties are bound by their pleadings (*Gudka & another v Roitei* [2025] KEELC 8091 (KLR)). As such, it is not open to the Respondent to submit on matters it did not allude to in its applications. In any event, submissions cannot be used as a substitute for either oral or affidavit evidence (*Gudka & another v Roitei* (supra)).
91. In its submissions, the Respondent accuses the Auctioneers and buyers of fraud. Yet, fraud was not pleaded in the applications under consideration or the affidavits in response. No particulars of fraud are set out in the affidavits in support of the applications or in the Respondent's response to the motion dated 10th September 2025.
92. As indicated earlier, the law does not permit a litigant to anchor his case on what he did not expressly plead. As such, the Respondent is not entitled to re-brand its case from one of acting in excess of instructions to one of fraud without having expressly set out the allegation of fraud in the applications under consideration or the affidavits in response.
93. Further, it is trite that allegations of fraud must not only be pleaded and particularized. They must also be cogently proved (*Steyn v Ruscone* [2025] KEHC 6196 (KLR)). This, the Respondent did not do.
94. The Respondent further contends through its submissions that to allow the impugned sales to stand would be tantamount to violating the constitutional right of learners in the institution to education. Yet, this was not pleaded in the applications under consideration.

Determination

95. The upshot is that after evaluating the facts and the law on the instant dispute, the court is unable to find the basis upon which to assail the impugned auction of 12th August 2025 through which the Advocate, through Vintage Auctioneers, caused motor vehicles registration numbers KCP 678K and KDA 139P to be sold. As such, the court declines to grant any of the orders sought in the applications dated 21st August 2025 and 5th September 2025.
96. With regard to the application dated 10th September 2025, the Applicants seek orders to be joined as Interested Parties to the action. In addition, they pray for lifting of the caveats which have allegedly been registered by the Respondent to prevent them from transferring motor vehicles registration numbers KCP 678K and KDA 139P into their names. However, the court is disinclined to grant the motion for various reasons.
97. First, an Interested Party in a suit is considered as a peripheral party in the action. As such, he is not entitled to seek substantive orders in the action (*Macharia & another v Director of Public Prosecutions & 11 others* [2022] KESC 61 (KLR)). Neither can the primary parties in the suit seek substantive orders against him (the Interested Party) (*Patel & another v United Engineering Supplies Limited*;



- Patel (Interested Party) [2024] KEELC 13276 (KLR)). This being the position, it is doubtful that the Applicants are entitled to seek the substantive orders which they seek in the matter in the capacity of Interested Parties.
98. Second, in a number of decisions, courts have taken the view that an application for joinder of a party to an action, including as an Interested Party, ought to be filed in ongoing and not concluded proceedings. Further, the court is not entitled to bring on board a new party at the post judgment stage if the intention of the proposed party is to present to it (the court) a new issue which was not before it (the court) at the pre-trial stage. (See *Kimwele v Kubora & another*; *Mwasya & 5 others (Interested Parties)* [2025] KEELC 5636 (KLR), *Nduva & 3 others v Ndar & 3 others*; *Ng'ang'a (Intended Interested Party) (Civil Case 24 of 2017)* [2024] KEHC 8118 (KLR) (Civ) (27 June 2024) (Ruling) & *Everton Coal Enterprises Limited v Karanja & 5 others (Application E026 of 2023)* [2023] KESC 98 (KLR) (10 November 2023) (Ruling)).
 99. The instant application for joinder of the Applicants is filed at the post judgment stage. Through it, the Applicants seek to be permitted to join the action in order to raise a new issue (transfer of the suit vehicles to them). This was not one of the matters that was between the primary parties at the pre-judgment stage. As such, it is doubtful that it is properly before court.
 100. Third, the instant proceedings were commenced as a miscellaneous cause under section 51(2) of the *Advocates Act* for purposes of adoption of the Certificate of Costs dated 17th February 2023 as a judgment of the court. That provision only allows the court to adopt a Certificate of Costs as a judgment of the court. It does not empower the court to issue any other orders in the adoption proceedings. As such, it is doubtful that the Applicants are entitled to supplant the instant application in the miscellaneous cause.
 101. Fourth, although the Applicants contend that the Respondent has registered caveats against the aforesaid vehicles, they have not provided proof of this in the application. They have not attached searches from the Registrar of Motor Vehicles to confirm their contention that there are subsisting caveats on the register which bar them from transferring the suit vehicles to themselves.
 102. The court notes that one of the Respondent's pleas in the applications dated 21st August 2025 and 5th September 2025 is for the court to order the relevant government agencies to register caveats against the suit motor vehicles. It will be absurd for the Respondent to make this request if it already has registered caveats against the vehicles.
 103. The fact that it (the Respondent) was pursuing the above request suggests that there are no caveats which have been registered against the vehicles in question. As such, the court is disinclined to issue orders to lift non-existent caveats as this will be tantamount to issuing orders in vain.
 104. Finally, the fact that the Applicants in the application dated 10th September 2025 have moved the court inappropriately is also self-evident from the motion itself. The application is expressed to be filed pursuant to section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules which deal with requests for review of a court order. Yet, there is no prayer for review in the motion. It will be irregular for the court to grant orders based on inapplicable provisions of law.
 105. In the court's view, the Applicants ought to lodge their requests for transfer of the vehicles with the relevant agencies in the first instance. Should the agencies decline to act on the requests, the Applicants will be entitled to take out substantive proceedings against them.
 106. In view of the foregoing, the court finds that the application dated 10th September 2025 has not only been filed in the wrong cause but is also premature. As such, it is declined.



107. Each party to bear own costs for the various applications.

DATED, SIGNED AND DELIVERED ON THE 2ND DAY OF FEBRUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Advocate

.....for the Respondent

.....for the Proposed Interested Parties

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

