

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**HCCOMM NO. 269 OF 2016**

**HON. JUSTICE ALEEM VISRAM**

**12<sup>TH</sup> MARCH, 2026**

**UTILITY CAPITAL MANAGEMENT  
LIMITED..... APPLICANT/DECREE HOLDER**

**VERSUS**

**EKAA AFRIKA LIMITED ..... 1<sup>ST</sup> RESPONDENT / JUDGMENT  
DEBTOR**

**CHRISTINE OCHIENG OUKO..2<sup>ND</sup> RESPONDENT/JUDGMENT DEBTOR**

**DENNIS MUGO ..... 3<sup>RD</sup> RESPONDENT/JUDGMENTDEBTOR**

**MORRIS WETINDI ..... 4<sup>TH</sup> RESPONDENT / JUDGMENT  
DEBTOR**

**RULING**

**A. Introduction**

1. Before the Court is the Notice of Motion dated 14<sup>th</sup> February, 2024, brought by the Applicant/Decree Holder under Order 22, rules 77(1), 79 and 81 of the Civil Procedure Rules, 2010.

2. The Applicant seeks principally an order that the sale by public auction of L.R. No. Ngong/Ngong/38847 be confirmed and declared absolute.
3. The application is supported by the affidavits filed on behalf of the Decree Holder and is opposed by the 3<sup>rd</sup> Respondent, who has filed a replying affidavit and written submissions.
4. I have considered the application, the affidavits on record, and the written submissions filed by the parties.

**B. Background**

5. The background to the present application is largely not in dispute.
6. The Plaintiff instituted this suit through a Plaint dated 15<sup>th</sup> September, 2016, seeking recovery of monies due.
7. Following a full hearing of the matter, judgment was delivered on 11<sup>th</sup> August, 2021, in favour of the Plaintiff for the sum of USD 380,368.18 together with USD 4,797.80 as special damages and costs of the suit.
8. A decree was subsequently extracted on 30<sup>th</sup> August, 2021.
9. Upon the decree remaining unsatisfied, the Decree Holder commenced execution proceedings. A warrant of attachment was issued and auctioneers instructed.

- 10.** During the course of execution, two parcels of land were identified as belonging to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, namely:
- a. L.R. No. Ngong/Ngong/38847, and
  - b. L.R. No. Kajiado/Kitengela/29665.
- 11.** The Decree Holder's case is that the property Ngong/Ngong/38847 was subsequently attached and sold by public auction on 24<sup>th</sup> November, 2023.
- 12.** The Applicant now seeks confirmation of that sale pursuant to the provisions of Order 22, rule 79 of the Civil Procedure Rules.
- 13.** The Applicant submitted that the decree in this matter remains unsatisfied.
- 14.** It is contended that execution was carried out lawfully through licensed auctioneers and in accordance with the Civil Procedure Rules.
- 15.** The Applicant further submitted that the property was duly attached, advertised and sold by public auction.
- 16.** It is therefore argued that the Court should confirm the sale and declare it absolute, there being no valid challenge to the auction.
- 17.** The 3<sup>rd</sup> Respondent on the other hand opposed the application and raises several grounds.

18. First, it is contended that the Applicant lacks locus standi to bring the present application.
19. Second, the 3<sup>rd</sup> Respondent disputes that the property in question was properly liable to attachment and sale.
20. It is further argued that there was no privity of contract between the Applicant and the 3<sup>rd</sup> Respondent.
21. The 3<sup>rd</sup> Respondent also disputes that a lawful auction took place on 24<sup>th</sup> November, 2023.
22. On that basis, the 3<sup>rd</sup> Respondent urges the Court to decline confirmation of the alleged sale.

**C. Issues for Determination**

23. Having considered the application and the parties' submissions, the issues that arise for determination are:-
- a. Whether the Applicant is properly before the Court.
  - b. Whether the auction of L.R. No. Ngong/Ngong/38847 was conducted in accordance with the law.
  - c. Whether the Court should confirm the sale and declare it absolute.

**D. Analysis and determination**

24. The confirmation of sales in execution proceedings is governed by Order 22 of the Civil Procedure Rules.

25. Order 22, rule 77(1) provides as follows: -

**Where no application is made under rule 74, rule 75 or rule 76, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall be made absolute in so far as the interest of the judgment-debtor in the property in the property sold is concerned.**

26. In addition, Section 48 of the Civil Procedure Act provides that: -

**Where immovable property is sold in execution of a decree and the sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.**

27. The effect of such confirmation is that the sale becomes absolute.

28. However, the Court retains a supervisory jurisdiction over execution proceedings to ensure that sales conducted through court process comply strictly with the law.

29. The Court must therefore be satisfied that the execution process was undertaken lawfully and fairly before confirming the sale.

***(i) Whether the Applicant is properly before the Court***

30. The present application has been brought by the Decree Holder in the suit.
31. The decree in favour of the Plaintiff remains unsatisfied.
32. As the holder of the decree, the Applicant is entitled under the Civil Procedure Rules to pursue execution and to seek confirmation of a sale conducted pursuant to that execution. The Respondent did not provide any authority which conclusively bars the Applicant from doing so.
33. I therefore find no merit in the challenge to the Applicant's standing to bring the present application.

**(ii) Whether the sale was lawfully conducted**

34. The power of the Court to confirm a sale presupposes that the sale was conducted pursuant to lawful execution proceedings.
35. Execution through attachment and sale of property is a recognized mode of execution under the Civil Procedure Rules.
36. The materials placed before the Court indicate that:
- a. A decree was issued;
  - b. Execution proceedings were commenced; and
  - c. Auctioneers were instructed.

37. The Applicant states that the property Ngong/Ngong/38847 was subsequently sold through a public auction on 24<sup>th</sup> November, 2023.
38. Importantly, there is no evidence before the Court that an application has been successfully made under Order 22, rule 75 or rule 79 to set aside the sale.
39. In the absence of a successful challenge to the sale, the Court's role under the rules is to confirm the sale once satisfied that the process was conducted through the Court's execution process.

**(iii) Whether the sale should be declared absolute**

40. The purpose of confirmation is to bring finality to execution proceedings.
41. Once a sale conducted in execution is confirmed, the purchaser obtains indefeasible rights to the property.
42. In the present case, no sufficient material has been placed before the Court demonstrating that the auction was conducted in violation of the law or that there exists a valid basis to set it aside. The material before the Court largely concerns matters that ought to have been raised pre-execution, and which this Court is not inclined to revisit at this stage.
43. In those circumstances, the Court is satisfied that the requirements for confirmation under Order 22, rule 79 have been met.

44. Having considered the application, the affidavits and the submissions of the parties, I am satisfied that the application dated 14<sup>th</sup> February, 2024, is merited.

45. The Court therefore makes the following orders: -

- a. **The sale by public auction of L.R. No. Ngong/Ngong/38847 conducted on 24<sup>th</sup> November, 2023, is hereby confirmed.**
- b. **The said sale is declared absolute pursuant to Order 22, rule 79 of the Civil Procedure Rules.**
- c. **The costs of the application shall be paid by the Respondent.**

*Dated and delivered virtually via Microsoft Teams this 12<sup>th</sup> day of March, 2026*

**ALEEM VISRAM, FCIArb  
JUDGE**

**In the presence of;  
Court Assistant: Lispa**

.....for Applicant/Decree Holder

.....for 1<sup>st</sup> Respondent/Judgment Debtor

.....for 2<sup>nd</sup> Respondent/Judgment Debtor

.....for 3<sup>rd</sup> Respondent/Judgment Debtor

.....for 4<sup>th</sup> Respondent/Judgment Debtor

ORIGINAL