

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

CAUSE NO. E010 OF 2023

AHMED ABDULKADER JIN CLAIMANT

VERSUS

KWALE INTERNATIONAL SUGAR COMPANY LIMITED RESPONDENT

AND

PETER SIMIYU AUCTIONEER

RULING

The claimant filed an application dated 4 December 2025 under the provisions of rule 9(1), (b) and (c) of the Auctioneers Rules, section 1A, 3, 31, and 63 (e) of the Civil Procedure Act and Order 51 of the Civil Procedure Rules seeking orders:

1. Spent.
2. The Officer Commanding Police Station is hereby authorised to provide police security/assistance to the licensed auctioneer, Peter Simiyu t/a Beyond Auctioneer, to remove or tow the attached motor vehicle registration. KAW 308K, KAX 707M, KBH672Q, KBE 826E and ZD-0672 Trailer confined in the respondent's premises yard, Ramisi, to finalise the execution of the decree issued herein on 4 July 2024 in favour of the claimant.
3. The costs of this application will be provided.

The auctioneer supports the application through the Affidavit of Peter Simiyu, as a court decree was issued on 4 July 2024 in favour of the claimant against the respondent for Ksh. 1,043,320 and warrants of attachment issued on 30 July 2025 seeking the execution of the decree. On 31 July 2025, the auctioneer attached the judgment debtor's property by serving the Proclamation Notice and taking an inventory of the same. Immediately, objection proceedings were filed, and a temporary order for stay of execution was granted. These proceedings were addressed with a ruling on 118 October 2025, resulting in dismissal. By this time, the Warrants of Attachment had expired on 14 November 2025.

Simiyu avers in his affidavit that the auctioneer has made various attempts to execute the court's decree but has been frustrated by the respondent's conduct as the judgment debtor. The uniformed security guards at the premises have been deployed to ensure no access to the

company premises. These acts of frustration have made it impossible to proceed with the execution; the application seeks a police escort to the premises to ensure assistance with the execution. The respondent is likely to alienate or dispose of its property to facilitate the execution process unless the orders sought are granted.

In reply, the respondent filed the Reply Affidavit of James Otieno Oduor, the human resources manager, who avers that the warrants of sale reissued by the court on 14 November 2025 expired on 12 January 2026 and are therefore fundamentally defective. The claimant, through the auctioneers, is not authorised to take action against the respondent or its property, and any action therefrom is invalid, null and void.

Otieno avers that the applicant has failed to file returns in the manner of execution within the timelines specified in the issued warrants of sale. It has also failed to disclose the details of the money received from the respondent and hence has come to court with unclean hands.

The respondent has a duty to implement security measures at its premises to ensure the safety of staff and its property. The orders sought in this regard are not justified, and the application should be dismissed with costs.

Determination

There is a court decree for the payment of Ksh. 1,042,545 plus auctioneer charges of Ksh. 147,535. The respondent, as the judgment debtor, has not satisfied the decree. The averments by Otieno, the respondent's human resources manager, that the respondent has made payments to the applicant are unsupported by any material evidence. The court's decree remains unsatisfied.

In his Supporting Affidavit, Simiyu admitted that pending the hearing of the Objectors proceedings, the Warrants of Attachment issued expired. These were reissued on 14 November 2025 to be returned by 12 January 2026.

The instant application was filed on 4 December 2025, in recognition of the Warrants issued to the auctioneer being valid.

The court was not able to address the application on 17 December 2025 as scheduled. It was not until 12 March 2026 that parties attended the hearing. At this point, the court, well seized of the matter, the warrants issued had expired. The respondent seeks to rely on these warrants to assert that, since they expired, they cannot be enforced. However, there is no effort to make payments of the due judgment sum to the claimant.

Execution is a lawful process, and the judgment herein is valid. The respondent, as the judgment debtor, has the duty to satisfy the same. No effort is taken in this regard.

The application by the claimant, supported by the auctioneers, is on a good foundation. The warrants of attachment shall be reissued immediately and within 7 days. Where the respondent is served and fails to make payment, the auctioneer shall be assisted by the Officer Commanding Police Station, Ramisi in Kwale County, to execute the warrants against the respondent at the costs of the respondent. For this application, each party bears its costs.

Accordingly, Warrants of Attachment shall be re-issued. The auctioneer shall be assisted by the OCS, Ramisi, to execute the warrants in satisfaction of the decree herein. Due costs to be met by the respondent.

The respondent may settle the decree plus auctioneer charges within 7 days from the date hereof.

Delivered in open court at Mombasa, this 19th day of March 2026.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Omar

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