

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE NO. E046 OF 2024

**KENYA UNION OF COMMERCIAL
FOOD AND ALLIED WORKERS.....CLAIMANT/RESPONDENT**

VERSUS

EQUATORIAL NUT PROCESSORS.....RESPONDENT/APPLICANT
BEMAC AUCTIONEERS.....AUCTIONEER

RULING

1. Through a Notice of Motion dated 12th November 2025, the Respondent/Applicant seeks, *inter alia*, the following orders: -

- a) ***THAT this Honourable Court be pleased to enjoin the 2nd Respondent as a party to this application.***
- b) ***THAT this Honourable Court be pleased to declare that the attachment and impounding of motor vehicle registration number KBP 782B by the 2nd Respondent was unlawful, null and void for want of proper proclamation.***
- c) ***THAT an order do issue compelling the 2nd Respondent to refund to the Applicant the decretal sum of KSh 1,658,322 paid under duress and***

coercion following the unlawful attachment of motor vehicle registration number KBP 782B.

d) THAT an order do issue disallowing the auctioneer's fees and charges arising from the impugned attachment.

e) The costs of this application.

2. The Application is supported by an Affidavit sworn on 12th November 2025 by **James Gichanga Karanja**. He deposes that on or about 3rd October 2025, the Applicant's representative, Anthony Mwangi Macharia, while driving motor vehicle registration number KBP 782B along Kenyatta Road, was intercepted by individuals identifying themselves as auctioneers from Bemac Auctioneers. The said individuals purported to be acting pursuant to warrants of attachment issued in this matter and proceeded to seize and tow the vehicle to their yard.
3. Mr. Karanja further avers that upon engaging the auctioneers, they insisted that the vehicle would only be released upon full payment of the decretal sum, failing which they would proceed to sell it in execution of the decree.
4. According to Mr. Karanja, the said motor vehicle is a company asset routinely deployed in the Applicant's sales operations and, at the time of its seizure, was transporting the company's product, namely porridge flour. He adds that the

detention of the said motor vehicle disrupted business operations and exposed the consignment to the risk of deterioration due to prolonged storage and handling.

5. He avers that, in order to avert further loss and under pressure and coercion, the Applicant paid the decretal sum of Kshs. 1, 658,322/-, and upon receipt of the said payment, Bemac Auctioneers released the motor vehicle to the Applicant.
6. Mr. Karanja states that upon reviewing the proclamation notice issued by the auctioneers, it emerged that the vehicle listed for attachment was KBV 394M and not KBP 782B, which had been seized.
7. He contends that the attachment of motor vehicle KBP 782B was irregular, unlawful, and void ab initio, being in contravention of **Rule 12(1)(b) of the Auctioneers Rules, 1997.**
8. Mr. Karanja further avers that Bemac Auctioneers acted without authority and outside the scope of the warrants in seizing a vehicle not described in the proclamation.

9. In his view, the payment made by the Applicant was not voluntary but was procured under duress, coercion, and economic compulsion arising from the unlawful detention of the vehicle and the threat of its sale.
10. Opposing the Motion, the 1st Respondent/Claimant filed a Replying Affidavit sworn on 26th February 2026 by **Andrew K. M'muriuki**, its General Secretary.
11. Mr. M'muriuki avers that the suit arose from the unlawful termination of nine grievants by the Applicant. Judgment was delivered on 11th July 2025, and on 15th July 2025, the Claimant served the Applicant with a demand letter together with a copy of the judgment, to which there was no response.
12. He states that on 19th August 2025, the Claimant instructed Bemac Auctioneers to execute the decree following the Applicant's failure to respond to the demand.
13. Mr. M'muriuki further deposes that on 3rd October 2025, the auctioneers attached motor vehicle KBP 782B, after which the Applicant settled the decretal sum through payment to the auctioneer.
14. He avers that on 8th October 2025, the auctioneers forwarded nine cheques in favour of the respective grievants.

15. In Mr. M'muriuki's view, the Applicant's allegation that the attachment was unlawful is without merit.
16. He contends that the decretal sum was paid voluntarily and that, having not disputed the amount due, the Applicant's demand for a refund of Kshs. 1,658,322 is misplaced.
17. The Auctioneer, **Joseph Mwangi King'ori**, opposed the Application through a Replying Affidavit sworn on 17th February 2026. Mr. Kingori states that he is a licensed Class "B" auctioneer under the Auctioneers Act, No. 5 of 1996.
18. He avers that on 19th August 2025, he received instructions from the Claimant to execute the Court's decree, and on 20th August 2025, he was issued with warrants of attachment and sale.
19. Mr. Kingori states that on 21st August 2025, he proceeded to the Respondent's premises in Muthaiga, Nairobi, near Muthaiga Primary School, where he served the warrants together with the proclamation notice serial number 2512.
20. He further avers that on 2nd September 2025, he applied for police escort and break-in orders from Muthaiga Police Station after being denied access to the Applicant's premises by its agents and employees.

21.Mr. Kingori deposes that upon further investigations, he identified additional assets belonging to the Applicant and issued a further proclamation notice serial number 2514 dated 18th September 2025, which was served via email and physically at the Applicant's offices, though the employees declined to acknowledge receipt.

22.He states that on 3rd October 2025, upon expiry of the notice period, he traced the Applicant's motor vehicle in the Kenyatta Road area of Kiambu County and attached motor vehicle KBP 782B, which he asserts was listed as item (j) in proclamation notice serial number 2514.

23.Mr. Kingori further avers that on the same day, the Applicant's representative engaged him, and they agreed on the settlement of the decretal sum together with the auctioneer's fees, which was paid without coercion or duress.

24.He states that he immediately released the motor vehicle to the Applicant's driver, Anthony Macharia, on the same day and on 8th October 2025, he remitted the entire decretal sum to the instructing party.

25.Mr. Kingori adds that he had not been served with any order of stay of execution at the time of remitting the decretal amount.

Submissions

26. The Application was canvassed by way of written submissions. The Claimant and the auctioneer duly filed their submissions, which the Court has considered. Notably, the Applicant did not file any written submissions.

Analysis and Determination

27. Upon considering the record, the Court finds that the main issue for determination is whether the Applicant's Notice of Motion dated 12th November 2025 is meritorious.

28. The crux of the Applicant's Motion is that the attachment of its motor vehicle, registration number KBP 782B, on 3rd October 2025 by Bemac Auctioneers was irregular, unlawful, and in contravention of **Rule 12(1)(b) of the Auctioneers Rules**. In this regard, the Applicant contends that the said motor vehicle was not included in the proclamation notice. In support of this position, the Applicant annexed to the Affidavit of Mr. Karanja a proclamation dated 21st August 2025 listing motor vehicle registration number KBV 394M among the proclaimed movable assets.

29. The Auctioneer disputes the Applicant's assertion, maintaining that he issued two proclamation notices, the second being dated 18th September 2025, which allegedly listed motor vehicle registration number KBP 782B. However, the said proclamation notice was not annexed to Mr. King'ori's affidavit. Instead, the documents attached to his Replying Affidavit pertain to a different matter.
30. Consequently, the only proclamation notice before the Court is that dated 21st August 2025, annexed to the Applicant's supporting affidavit.
31. Accordingly, the material on record does not demonstrate that motor vehicle registration number KBP 782B was ever proclaimed by the Auctioneer.
32. It follows, therefore, that motor vehicle registration number KBP 782B was not lawfully proclaimed, and the auctioneer lacked authority to attach the same.
33. The Court concurs with the decision in *Kamau & another v Wasike (Civil Appeal E070 of 2021) [2024] KEHC 9913 (KLR) (7 August 2024) (Ruling)*, that an auctioneer cannot attach and sell goods that were never proclaimed in the first instance.

34. In view of the foregoing, the Court finds that the attachment of the Applicant's motor vehicle registration number KBP 782B was irregular and unlawful.

35. Having so found, the issue that arises is the effect of the decretal sum paid by the Applicant pursuant to the impugned attachment.

36. The Applicant contends that it paid the decretal sum of Kshs. 1,658,322.00 to the Auctioneer in order to avert loss of the consignment (porridge flour) that was being transported in the motor vehicle at the time of its seizure.

37. On the other hand, the auctioneer maintains that the Applicant's representative engaged him following the attachment and voluntarily agreed to settle both the decretal sum and his fees, after which the decretal amount was remitted to the Claimant.

38. The Claimant confirms receipt of the decretal sum. In this regard, the Claimant annexed to the affidavit of Mr. M'muriuki copies of nine cheques issued in favour of the grievants.

39.It is not in dispute that a valid judgment and decree exist on record in favour of the nine grievants who were represented by the Claimant union. Further to this, there is no evidence that the said judgment and decree have been set aside.

40.Accordingly, notwithstanding the circumstances under which payment was made, it is not disputed that the Applicant was obligated to satisfy the judgment by settling the decretal sum.

41.Given that the decretal sum has already been disbursed to the grievants, it would be impracticable to order the Auctioneer to refund the same, particularly in light of the fact that the attached motor vehicle was subsequently released to the Applicant.

42.For that reason, the Applicant’s prayer for a refund of Kshs. 1,658,322.00 is disallowed.

43.There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NYERI this 24th day of April 2026

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Muunda instructed by Ms. Macharia for the Claimant/Respondent

No appearance for the Respondent/Applicant

Mr. Mwangi the Auctioneer (in person)

Ndati Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective

which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL