

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CIVIL CASE NO.10 OF 2016**

**DOREEN EKIRAPA & SIMON OKIYA OKISEGERE ( suing as  
the personal representative of the estate of JACOB  
EKIRAPA OKISEGERE.....PLAINTIFF/  
RESPONDENT**

**VERSUS**

**ABDIFATAH ABDI.....1<sup>ST</sup> DEFENDANT/2<sup>ND</sup>  
RESPONDENT**

**CHRISTOPHER MCLEAN...2<sup>ND</sup> DEFENDANT/3<sup>RD</sup>  
RESPONDENT**

**KENNEDY SHIKUKU**

**T/A ESHIKONI AUCTIONEERS.....3<sup>RD</sup>  
RESPONDENT**

**AND**

**LIQMAN PERTROLEUM LIMITED.....OBJECTOR/  
APPLICANT**

**RULING**

1. The Motion dated 24.7.2025 has been filed by the objector/applicant. It is brought under Order 22, Rules 51 of the Civil Procedure Rules, Section 1A and 3A of the Civil Procedure Act and Article 159 of the Constitution. The applicant is seeking the following orders ;

- i. Spent
  - ii. THAT pending hearing and determination of the application this court be and hereby pleased to issue a temporary stay of execution of the warrants of attachment dated 23rd July 2025 pertaining to the objector's assets Motor Vehicles Registration KCF 497V, KBR 163T, KCF498V, ZE9847, KBR165T.
  - iii. THAT the Honourable Court be pleased to set aside the proclamation and attachment in the whole of Motor Vehicle Registration Numbers KCF 497V, KBR 163T, KCF498V, ZE9847, KBR165T as proclaimed and attached by Kennedy Shikuku T/A Eshikhoni Auctioneers acting under the instructions of Situma & Co Advocates in execution of the judgment and/or Decree and/or Certificate of stated costs issued herein
  - iv. THAT the plaintiff/deed holder, through the agents, including Eshikhoni Auctioneers or any other Auctioneers, be precluded from proclaiming or having proclaimed from attaching or selling the objector's property now or in future in answer to the decree of this Honourable Court.
  - v. THAT the Honourable Court be pleased to issue any such and/or further order as it may deem fit in the interest of justice.
2. The application is grounded on the face of the application and supporting affidavit dated 24<sup>th</sup> July 2025, of Mohamed

Abdulahi, the director of the objector/ applicant. The application was opposed.

3. The applicant deposes that on 23.7.2025 the court issued warrants of attachment against the 3rd Respondent. The 3rd Respondent appeared at the applicant's garage in Eldoret and attached motor vehicles with registration numbers KCF 497V, KBR 163T, KCF498V, ZE9847, KBR165T, all valued at Kshs 80,000/-. The objector is the lawful and registered owner of the aforementioned motor vehicles. The 3rd Respondent has threatened to move court for forceful entry to the applicant/objector's premises and to attach all movable property, yet the applicant is a non-party to this suit, nor is any judgment against it. The objector/applicant stands to suffer untold prejudice if the orders sought are not granted.
4. The respondent's counsel averred that the objection is res judicata, and that no objector's properties have been attached by Eshikhoni Auctioneers; instead, only a proclamation has been tendered to the applicant. The 1st defendant trades as Lugman Petroleum Limited and is using the objector to stall the execution of the decree; the application is aimed at shielding the judgment debtor from execution. The 1st defendant/Respondent is a beneficial user and owner of the motor vehicle ZD 9059. The objector applicant is fully insured by Monarch Insurance Co. Ltd for the motor vehicles that caused the accident, namely KBR 162T and ZD 9059 (trailer), both vide policy No. HDO/O8O7O/00030/2014/T.P.O, respectively. The 1st

defendant, through his company Lugman Petroleum Company, paid Victoris Auctioneers a sum of Kshs. 2,000,000/-, and another payment was made in July 2024. The 1st defendant cannot claim not to be a party in the matter and, at the same time, liquidate by paying the decretal balance for the 1st defendant/Respondent.

5. The application was canvassed by way of written submissions. Only the applicant filed submissions. The Respondent submitted that they rely on their replying affidavit dated the 29.7.2025.

### **DETERMINATION**

6. I have considered the rival affidavits and the applicant's submissions. The sole issue for determination in this application is whether the proclamation and attachment carried out by the 3rd Respondent should be set aside. To support its claim, the applicant has attached warrants of attachment issued against Abdifatah Abdi and Christopher Mclean. It has also attached motor vehicle records for each subject vehicle, which show that the vehicles are owned by Liqman Petroleum Limited. The objector is not a party to the suit, and this has not been challenged by the Respondents. The 3rd Respondent cannot execute warrants against a party who is not a party to the suit. Once goods are proclaimed, the next step is to collect them if the sum owed remains unpaid. A proclamation is

not an issued form; it is a document used to progress execution.

7. The Respondent's arguments that the application is res judicata have not been substantiated; they are mere assertions. In addition, their argument that the objector applicant has been liquidating the decretal sums in this matter cannot stand, as they have failed to show that the said company is a party to this suit. The attached statements do not demonstrate that the applicant was liquidating the debt. The Respondent's arguments cannot support their claim that the execution process is lawful against the objector.
8. I therefore set aside the proclamation and attachment of the motor vehicle registration numbers KCF 497V, KBR 163T, KCF 498V, ZE9847, and KBR 165T, as proclaimed and attached by Kennedy Shikuku T/A Eshikoni Auctioneers. Costs are awarded to the objector.

**Dated, signed and delivered virtually on this 9th Day  
of April 2026.**

**R.OUGO**

**JUDGE**

**In the presence of:**

**Mr. Nyarama h/b Miss Mathia for the Objector/  
Applicant**

**Respondent- Absent**