

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC CAUSE NO. E144 OF 2021

(Before Hon. Lady Justice Hellen Wasilwa, J)

**HARRISON MACHARIA MAINA.....CLAIMANT/DECREE
HOLDER**

VS

**LEO DESIGNS LIMITED.....RESPONDENT/JUDGMENT
DEBTOR**

AND

**BEALINE KENYA AUCTIONEERS.....INTERESTED
PARTY**

RULING

1 The Respondent/ Judgment Debtor/ Applicant filed a Notice of Motion application dated 11th December 2025 seeking orders: -

1. *Spent*
2. *THAT this court do find that the firm of SONOIYA & CO. ADVOCATES are properly on record in place of ONYONI, OPINI & GACHUBA ADVOCATES having duly obtained a consent thereof which consent this court should be pleased to endorse.*
3. *THAT pending the hearing and determination of this application, this Honourable Court be pleased to grant an order of stay of execution of the warrants of attachment and any consequential steps taken or intended by Bealine Kenya*

Auctioneers (the Interested Party herein) pending the hearing and determination of this application.

4. *THAT this Honourable Court be pleased to set aside, vary, or discharge the decree and warrants of attachment issued in ELRC No. E144 of 2021 as they are irregular, oppressive, and unlawful.*
5. *THAT this Honourable Court be pleased to declare that the purported attachment of motor vehicles and movable goods not registered in the Applicant's name is unlawful, null and void, and the Auctioneers be directed to forthwith desist from any further interference therewith.*
6. *THAT this Honourable Court do order the Auctioneers to furnish a detailed, itemised, and lawfully justified bill of costs, and that any inflated, exaggerated, or unjustified charges be struck out.*
7. *THAT costs of this application be provided for.*
8. *THAT this Honourable Court do issue such further orders as may meet the ends of justice.*

Respondent/Judgment Debtor/ Applicant's Case

- 2 The Applicant avers that on 5th December 2025, it was unexpectedly served with warrants of attachment issued in this matter, and contends that the process was irregular and prejudicial.

- 3 The Applicant further avers that pursuant to the said warrants, the Auctioneers proceeded to proclaim movable property, including several motor vehicles which are not registered in the Applicant's name, notably motor vehicle registration number KHZ 803W, which belong to third parties.
- 4 It is the Applicant's case that the Interested Party presented an inflated and exaggerated bill of costs which is not commensurate with the limited work undertaken, primarily a proclamation, and contends that the same amounts to gross misconduct in violation of the Auctioneers Rules and all relevant law.
- 5 The Applicant avers that the sum reflected in the warrants of attachment is grossly exaggerated and does not correspond with the amount indicated in the application for execution filed by the Respondent's Advocates, which cites a significantly lower sum of Kshs. 1,505,985.00, and asserts that the inclusion of interest is irregular and inconsistent with ordinary computation of court interest.
- 6 The Applicant contends that it has an arguable and intended appeal raising weighty constitutional and jurisprudential questions suitable for determination by the Supreme Court, and thus urges that its right of appeal ought to be preserved.

- 7 The Applicant further avers that unless restrained, the Auctioneers are likely to unlawfully break into its premises, remove items belonging to third parties, and occasion it immense prejudice, loss, and embarrassment.
- 8 It is the Applicant's case that it has bona fide grounds to challenge the warrants and is desirous of exercising its right of appeal or review, but risks suffering irreparable harm unless the orders of stay are granted.
- 9 The Applicant therefore contends that it is only fair and in the interests of justice that the Court grants the orders sought.

Claimant/Decree Holder and Interested Party's Case

- 10 In opposition to the application, the Claimant/ Decree Holder and the Interested Parties filed a replying affidavits both dated 27th February 2026.
- 11 The Respondent avers that the Applicant was not ambushed as alleged, and asserts that it was duly served through its advocates with the Court decree on 24th November 2025.
- 12 The Respondent further avers that the Applicant's assertions regarding third-party ownership of the proclaimed property are grossly misleading and in bad

taste, and contends that no alleged third parties have opposed the attachment and proclamation.

- 13 The Respondent asserts that the Interested Party's bill of costs is not exaggerated but reasonable, considering the expenses incurred, and denies any misconduct on the part of the Auctioneer.
- 14 The Respondent contends that the Applicant has no arguable intended appeal to the Supreme Court, and avers that the Court of Appeal dismissed the Applicant's stay application dated 23rd July 2024 arising from this Court's judgment delivered on 29th September 2021, which judgment the Applicant has not appealed against to date. Further, the Court of Appeal pronounced itself on lack of jurisdiction, and no further appeal has been preferred.
- 15 The Respondent states that the Applicant's assertions are misconceived, misleading and made in bad faith, and reiterates that execution is ongoing in respect of a valid judgment and decree delivered on 29th September 2021, which has neither been appealed against nor reviewed to date, and that the Applicant has no subsisting stay order of execution of the judgment.
- 16 It is the Respondent's case that the decree being executed is a money decree, and the Applicant has not demonstrated any real, specific, substantial or irreparable loss, and that no such loss will be suffered.

- 17 The Respondent asserts that this Court's judgment of 29th September 2021 and resultant decree are proper, lawful and not oppressive, and that setting aside, varying or discharging the same would occasion injustice.
- 18 He contends that the Applicant's intended appeal to the Supreme Court relates to this Court's ruling delivered on 30th June 2022 and not the judgment of 29th September 2021 which is under execution.
- 19 The Respondent further avers that the Applicant's prayer to set aside the decree and warrants is made in bad faith, noting that the decree is already the subject of Court of Appeal Case No. COA/E515/2023 in which parties have filed submissions and the matter awaits judgment, thus rendering the issue *sub judice*. Therefore, the intended appeal is unrelated to the execution of the current decree.
- 20 He avers that the warrants, proclamation and attachment are lawful and valid and ought not to be set aside, and maintains that the application lacks legal foundation, is misconceived and misleading, and is intended to delay the Respondent from realizing the fruits of the judgment delivered on 29th September 2021.
- 21 It is the Respondent's case that it is not in the interest of justice to grant a stay of execution of a judgment that has not been appealed against or reviewed. The Applicant was

accorded a fair hearing, and that the present application and intended appeal against the Court of Appeal ruling delivered on 24th January 2025, brought after a delay of 11 months, are inordinate and an afterthought.

Respondent/Judgment Debtor/Applicant's Submissions

- 22 The Applicant submitted on five issues: Whether the warrants of attachment and execution herein are irregular, unlawful, and liable to be set aside; Whether the attachment of third-party property is illegal and void; Whether the Applicant has satisfied the threshold for grant of stay of execution pending appeal; Whether the auctioneer's charges are excessive, unlawful, and an abuse of process; Whether the interests of justice warrant the intervention of this Honourable Court.

- 23 On the first issue, the Applicant submitted that it is trite law that execution proceedings must strictly comply with the Civil Procedure Rules, and any deviation renders the process liable to be set aside.

- 24 It was submitted that the impugned warrants are irregular as they incorporate grossly exaggerated and unsubstantiated interest figures inconsistent with the decree, were executed in a manner calculated to ambush the Applicant in violation of procedural fairness, and derive from a decree arising from a contested interlocutory judgment where the question of proper

service remains unresolved. It cited ***National Industrial Credit Bank Ltd v Aquinas Francis Wasike & another [2006] eKLR***, where the Court of Appeal held: “Once an applicant expresses a reasonable fear that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge.”

- 25 It was further submitted that courts have inherent jurisdiction to set aside execution proceedings where the same are irregular or unjust. Reliance was placed in ***Shah Vs Mbogo [1967] E.A 116***, “..... the discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”
- 26 The Applicant submitted that judicial discretion exists to prevent injustice or hardship resulting from accident, inadvertence, or excusable error, and therefore the impugned warrants, being tainted with irregularity, are liable to be set aside *ex debito justitiae*.
- 27 On the second issue, the Applicant submitted that the attachment of property not belonging to a judgment debtor is not merely irregular but unlawful. The material evidence demonstrates that the auctioneers proclaimed

assets, including motor vehicles and other assets, which are neither owned by nor registered in the name of the Applicant but belong to third parties, and that such conduct is a direct affront to the law. It relied on ***Precast Portal Structures v Kenya Pencil Company Ltd & 2 others [1993] eKLR.***

- 28 It was submitted that this position is grounded under Order 22 of the Civil Procedure Rules which admits of no ambiguity, that execution must be confined strictly to the assets of the judgment debtor, and any transgression renders the process void. The Applicant argued that the continued subsistence of such unlawful attachment exposes innocent third parties to prejudice and warrants the Court's intervention.
- 29 On the threshold for grant of stay of execution pending appeal, the Applicant submitted that it has satisfied in full the requirements under Order 42 Rule 6 of the Civil Procedure Rules, namely substantial loss, application made without unreasonable delay, and provision of security.
- 30 On substantial loss, it was submitted that the Applicant faces immediate and irreparable prejudice through unlawful seizure and imminent sale of assets, including those belonging to third parties, severe disruption to its

commercial operations, and reputational harm incapable of adequate compensation.

- 31 The Applicant relied on ***Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR***, where the Court emphasized: *“Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented..... It is not sufficient by merely stating that the sum is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted.”*
- 32 It is the Applicant’s submission that the application was brought timeously, immediately upon notification of the execution. Further, it has demonstrated the existence of an arguable appeal raising weighty issues including procedural fairness and constitutional considerations before the Court of Appeal. Reliance was placed on ***Butt v Rent Restriction Tribunal [1982] KLR 417***.
- 33 On the auctioneer’s charges, the Applicant submitted that the auctioneer’s charges are grossly inflated and disproportionate to the limited acts undertaken, namely proclamation, and are indicative of an attempt to convert execution into a vehicle for unjust enrichment.

- 34 It was submitted that under the Auctioneers Rules, fees must be reasonable, proportionate, and strictly regulated. Therefore, this Court is empowered to scrutinize and strike out unlawful charges.
- 35 On this Court's intervention, the Applicant submitted that this Court is vested with inherent jurisdiction under Sections 1A, 1B, and 3A of the Civil Procedure Act, and guided by Article 159(2)(d) of the Constitution, to ensure that justice is administered fairly and without undue technicality.
- 36 It was submitted that the Applicant faces imminent unlawful attachment, violation of third-party rights, and a risk of rendering the intended appeal nugatory; and relied on ***Absalom Dova v Tarbo Transporters [2013] eKLR.***
- 37 The Applicant argued that the balance of convenience tilts heavily in favour of maintaining the status quo pending determination of the dispute.
- 38 The Applicant submitted that this is not a case of mere procedural irregularity but one of execution conducted in disregard of the law, in violation of rights, and in a manner that offends the conscience of the Court.
- 39 It is the Applicant's submission that the execution process is tainted with illegality, irregularity, and oppression; that the attachment of third-party property is unlawful; that the

Applicant has met the threshold for stay of execution; and that the auctioneer's conduct amounts to an abuse of court process. The Applicant therefore urged this Court to intervene to prevent manifest injustice.

Claimant/Decree Holder's Submissions

40 On the question of stay of execution, the Claimant submitted that the Respondent/Judgment Debtor has not satisfied the mandatory principles for grant of stay of execution of the decree issued on 22nd October, 2021 and the warrants of attachment.

41 It was submitted that stay of execution is governed by well-established principles, namely: the applicant must demonstrate an arguable appeal with a chance of success, that the appeal would be rendered nugatory, that the application is brought without delay, provision of security, and that the respondent would not be prejudiced; as demonstrated in ***Nairobi City Council v Tom Ojienda & Associates [2022] KECA 1326 (KLR)***.

42 It is the Claimant's submission that the Respondent/Judgment Debtor has failed to meet these mandatory prerequisites.

43 On whether the Respondent has an arguable appeal, the Claimant submitted that the warrant of attachment is based on a valid judgment delivered on 29th September,

2021 and decree extracted on 22nd October, 2021 against which the Respondent has not preferred any appeal or review whether in this Court, the Court of Appeal, or the Supreme Court.

44 It was submitted that the stay application does not meet the legal threshold under Order 40 Rule 6 of the Civil Procedure Rules and that the Applicant's claim of an arguable appeal to the Supreme Court is misleading and a non-starter. He argued that even if the matter were to go to the Supreme Court, the court lacks jurisdiction to hear matters not determined by the Court of Appeal under Articles 163(3) and (4) of the Constitution, therefore, the application is therefore misleading, misconceived, and frivolous; and the application lacks *legal stratum* upon which this Court could exercise its discretion.

45 It was further submitted that the Respondent is intentionally approaching this Court with unclean hands by deliberately misleading the Court that Civil Appeal No. COA/E515 of 2023 is preferred against the judgment of 29th September, 2021 and the decree of 22nd October, 2021, whereas in truth the said appeal is against this Court's ruling of 30th June, 2022 in which this Court declined to set aside its substantive judgment.

46 It is the Claimant's submission that the alleged intended appeal to the Supreme Court is an abuse of court process, as there is no leave or certificate of the Court of Appeal to

allow the intended appeal to the Supreme Court under Article 163 (3) and (4) of the Constitution.

47 The Claimant submitted that the Respondent/Judgment debtor is un-procedurally and illegally seeking to set aside this Court's judgment of which neither Notice of Appeal was filed under Rule 77 (1) of the Court of Appeal Rules nor leave to appeal obtained under Rule 84 of the Court of Appeal Rules up-to-date, rendering the intended appeal to the Supreme Court a nullity for lack of jurisdiction.

48 The Claimant further submitted that the application for stay is *res judicata* as the Court of Appeal dismissed a similar application by the Respondent dated 23rd July, 2024 vide its ruling of 24th January, 2025 in Civil Appeal (Application) No. COA/E515 of 2023 as lacking merit. He relied on ***Nyarangi v Musyoki Mogaka & Co. Advocates [2022] KEHC 345 (KLR)***, where the court held that abuse of court process arises where there is a multiplicity of actions on the same subject matter between the same parties, where there is no iota of law supporting a court process, and where a second action seeks relief that could have been obtained in the first. It was submitted that the Respondent's conduct squarely falls within these circumstances.

49 On whether the appeal would be rendered nugatory, the Claimant submitted that this issue does not arise as there is no pending appeal against the judgment of 29th

September, 2021 or the decree of 22nd October, 2021. He relied on ***Stanley Kangethe Kinyanjui V Tony Ketter & 5 others [2013] eKLR***: “ The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.”

- 50 It is the Claimant’s submission that this is a money-decree and the Respondent/Judgment debtor would not suffer irreparable damage. It can always be compensated with money by the Claimant/Judgement holder and at any rate, the Applicant has not demonstrated that the Claimant/Judgement holder would be unable to compensate the Applicant in case the judgment is overturned.
- 51 The Claimant submitted that it is trite law that an appeal would be rendered nugatory if the transaction to be stayed would be irreversible. An award of money is a reversible and the Respondent/Judgment debtor has not provided any evidence that he would not refund the money if the application is disallowed. It was further submitted that the issue of nugatory does not arise in a money-decree compensation.
- 52 On whether the application is frivolous, the Claimant relied on ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR*** and submitted that the Respondent has not appealed against the substantive judgment of 29th September, 2021, that the Memorandum

of Appeal in Civil Appeal No. COA/E515 of 2023 is directed at the ruling of 30th June, 2022 only, and that no Notice of Appeal was issued within 14 days of the judgment as required under Rule 77(2) of the Court of Appeal Rules. The application is therefore frivolous and presents no serious question for determination.

- 53 On the application to set aside the decree, the Claimant submitted that the Respondent is seeking to set aside the decree of 22nd October, 2021 on grounds that it is irregular, oppressive and unlawful. However, this application is *res judicata*, as it is similar to the Applicant's application dated 14th October, 2021 which was dismissed by this Court vide its ruling of 30th June, 2022 as lacking merits.
- 54 It was submitted that the Respondent/judgment debtor is estopped to raise again the issue of setting aside of the court decree which this court had validly.
- 55 It is the Claimant's submission that the matter is also *sub judice* as it is indirectly and substantially in issue in Civil Appeal No. COA/E515 of 2023 where parties have filed written submissions and are awaiting judgment.
- 56 On the doctrine of *res judicata*, the Claimant relied on Section 7 of the Civil Procedure Act which provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and

substantially in issue in a former suit between the same parties and has been heard and finally decided by a court of competent jurisdiction. He further relied on ***John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others [2021] eKLR*** wherein the Supreme Court explained: *“For res judicata to be invoked in a civil matter the following elements must be demonstrated: a) There is a former judgment or order which was final; b) The judgment or order was on merit; c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and d) There must be between the first and the second action identical parties, subject matter and cause of action.”*

57 On sufficient reason to set aside the decree, the Claimant submitted that the allegations that the decree is irregular, oppressive and unlawful are entirely unsubstantiated in the Supporting Affidavit sworn on 11th December, 2025.

58 It is the Claimant’s submission that this court exercised its discretion judicially in accordance with the law and evidence to deliver its judgment of 29th September, 2021 and court ruling of 30th June, 2022. There was no misdirection or whimsical decision. The Respondent/judgment debtor was in flagrant non-compliance with mandatory rules of procedure for not entering appearance or filing defense under Order 7 Rule 1 of the Civil Procedure Rules. He argued that the

Respondent/ judgment debtor did not provide any tangible steps taken for follow-up of its case. Neither did the Applicant's advocates tender any iota of evidence or give satisfactory reason for not complying with the mandatory rules of procedure.

59 He submitted that this Court's judgment was regularly entered, that both the Respondent/judgment debtor and its advocates were duly served with the Summons to enter appearance on 23rd February 2021 and 28th April 2021 respectively. However, the Respondent/Judgment debtor ignored, refused and /or failed to file Memorandum of Appearance or Defense.

60 It was submitted that the unsubstantiated claims of misdiarizing and illness by counsel raised in the earlier application of 14th October, 2021 were neither satisfactory nor sufficient to invoke the discretionary jurisdiction of the Court.

61 On triable issues, the Claimant submitted that the draft defence and counter-claim filed in the Respondent's application of 14th October, 2021 did not raise genuine triable issues, as a closer analysis reveals that the alleged triable issues were either mere sham, admissions by both parties, or agreed issues in the pleadings.

62 On delay, the Claimant submitted that the present application of 11th December, 2025 seeks to set aside a

decree issued on 22nd October, 2021, representing a delay of approximately five years. He argued that this delay is inordinate, inexcusable and unjustifiable and confirms that the application is an afterthought designed to obstruct the Claimant from realising the fruits of the judgment.

63 On prejudice, the Claimant submitted that he has been on indefinite unpaid leave since 22nd June, 2020 following constructive dismissal, though he is the sole breadwinner for a family of five, and that his children have been forced out of school. He argued that denying the Claimant the right to realise the fruits of the judgment will subject him and his family to poverty, hardship and psychological torture. It was submitted that on the contrary, the Respondent is a business entity that has not adduced any evidence of financial stress or hardship and has not produced any financial accounts to support such a claim.

64 On the attachment of motor vehicles and movable goods, the Claimant submitted that the Interested Party is executing a valid and lawful decree based on the judgment of 29th September, 2021 which has not been challenged in the Court of Appeal. He argued that the Interested Party's other disbursements/expenses where attachment or repossession is stayed or postponed under Rule 4, Part II of Schedule 4 of the Auctioneer Rules. He further submitted that the claim that certain motor vehicles are owned by third parties is without credible

evidence as no such third parties have come to Court to assert ownership.

65 I have examined all the averments and submissions of the parties herein. From the record, I note that consent of the parties was endorsed by Hon. Judge Keli on 13/1/2026 that the firm of Sonoiya & Co advocates were coming on record instead of Onyoni Opini & Gachiba advocates for the respondents herein. The applicant/ respondents also sought orders of stay of execution of orders of attachment or intended by Bealine Kenya Auctioneers was also stayed pending hearing of this application interparties.

66 The applicant has contended that the claimant through Bealine Auctioneers served the applicant with warrant of attachment demanding execution on 5/12/25. The applicant has contended that the auctioneer bills were high and some of the properties attached belong to 3rd parties. The applicant attached to this application a proclamation notice dated 5/12/2025. He avers that he attached evidence that the attached motor vehicle belong to a 3rd party but there is no such evidence before court and neither are there any objection proceedings pending before court.

67 There is no stay before the Court of Appeal and the application filed by the applicants at the Court of Appeal for stay was dismissed. The applicant had approached the Court of Appeal seeking to have their intended appeal to

Supreme Court certified as raising substantial points of law but their quest was refused.

68 It is also true that the applicant sought stay orders before the Court of Appeal but the court declined to grant the prayers. Since the Court of Appeal is correctly ceased of this matter in CA E515 of 2023, this court would be meddling into matters before a superior court and which application was also dismissed by this court vide its ruling on 30/6/2022. I would therefore decline to grant any orders in this application and dismiss it accordingly.

**Dated, Signed and Delivered Virtually at Nairobi
this 7th Day of May, 2026.**

HELLEN WASILWA

JUDGE