

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

*(Before Hon. Lady Justice Monica Mbarũ)*

**CAUSE NO. E047 OF 2023**

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

*VERSUS*

**KENYA MARINE CONTRACTORS [EPZ] LIMITED**

**.....RESPONDENT**

**AND**

**DIAMOND TRUST BANK KENYA LIMITED.....OBJECTOR**

**AND**

**MS JOSEPH M KINGO'ORI**

**T/A BEMAC AUCTIONEERS.....AUCTIONEER**

**RULING**

The ruling herein consolidates three (3) applications:

An application dated 23 March 2026 was filed by the objector.

An application dated 9 April 2026 was filed by the auctioneer.

An application dated 15 April 2026 was filed by the objector.

The objector's application dated 23 march 2026 is premised under the provisions of section 7 of the Appellate Jurisdiction Act, order 43 rule 1, 2, 3 of the Civil Procedure Rules, sections 75, 1A and 3A of the Civil Procedure Act and seeking orders that the court do grant leave to the objector to appeal to the court of appeal against the ruling of the court delivered on 19 march 2026. The objector is granted 3 more days to file the Notice of Appeal.

The application is supported by the Affidavit of Beatrice Kavata, and on the grounds that the applicant filed an application dated 5 January 2026 seeking a stay of execution of the judgment and decree against the judgment debtor dated 19 November 2025. The objector's application was dismissed. The Objector is aggrieved and is seeking to file an appeal to the Court of Appeal. The timeline for filing the appeal is 14 days, and the same lapsed on 2 April 2026. Unless leave is granted to file the appeal, the objector will suffer great prejudice, loss and damage.

Kavata avers that, as the advocate for the objector and in the conduct of the matter, she is conversant with the facts herein

and is therefore competent to support the application. Unless the orders sought by the objector are granted, there shall be irreparable loss and damage.

In reply, the claimant filed Grounds of Opposition that the application by the objector is in abuse of court process. The same violates the Appellate Jurisdiction Act, which allows for an automatic right of appeal to the Court of Appeal.

Section 17 of the Employment and Labour Relations Court Act grants a party a right of appeal from any decision of the court. Such a right of appeal may be exercised in accordance with the Court of Appeal rules of procedure.

The objector has relied on section 7 of the Appellant Jurisdiction Act, seeking 3 days' leave to file the Notice of Appeal and serve. Section 7 of the Appellate Jurisdiction Act, provides as follows:

***The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal,***

***notwithstanding that the time for giving such notice or making such appeal may have already expired: Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence***

Although the court may extend time to file a Notice of Intention to Appeal from a judgment out of time, the applicant must explain why the timeline allowed under the constitutive law was not utilised. The rationale is that extension of time is not a right but a discretionary order. It is an equitable remedy that is only available to a deserving party at the discretion of the Court, as held in **Nicholas Kiptoo Arap Korir Salat versus Independent Electoral and Boundaries Commission & 7 others [2014] eKLR**. An applicant must explain the cause of the delay.

Thus, a party that seeks an extension of time has the burden of laying a basis to the court's satisfaction, as held in **Njagi v Syokimau Farm Limited & 15 others [2026] KEELC 2591 (KLR)**.

In this regard, the objector, save to urge the court that there will be prejudice, loss and damage, there is no effort to explain the cause of the delay from 19 March 2026, when the impugned ruling was delivered, to 23 March 2026, when the subject application was filed.

The objector was within time to file a Notice of Intention to Appeal on 23 March 2026. Instead of filing the same, this application was filed.

The court finds no reasonable cause to allow the subject application.

The application is premised under Order 22 of the Civil Procedure Rules and is seeking a stay of execution of the decree dated 19 November 2025, pending the hearing of the objectors' intended appeal and dated 15 April 2026 by the objector.

The application dated 15 April 2026 is premised under the provisions of Order 22 of the Civil Procedure Rules, and the objector is seeking a stay of execution of the Decree dated 19 November 2025 pending the hearing and determination of the intended appeal and the application dated 23 March 2026. The

objector is also seeking that the application be heard in priority to the auctioneer's application dated 9 April 2026.

The application is supported by the affidavit of Faith Ndonga, who avers that a decree dated 30 October 2025 and Warrants for Attachment dated 30 January 2025 were issued to Bemac Auctioneers, acting under the instructions of the claimant, the judgment creditor.

Ndonga avers that the objector is a secured creditor with a valid debenture over the proclaimed assets and thus filed an application dated 5 January 2026 seeking a stay of execution of the decree. The application was heard and determined in a ruling delivered on 19 March 2026. Upon the ruling, the objector inadvertently failed to seek leave to file an appeal and has thus done so in an application dated 23 March 2026, and unless there is a stay of execution, the objector will suffer loss and damage.

Ndonga avers that the auctioneer has since filed an application dated 9 April 2026, seeking forceful entry into the respondent's premises to attach the movable assets therein. If this is allowed, it will render the objector's intended appeal nugatory.

In reply, the claimant filed grounds of opposition. The claimant asserts that,

upon the court's ruling, the objector had the right to appeal to the Court of Appeal, a right that has not been exercised. The instant application is filed to delay execution of a valid judgment and decree of the court and should be dismissed with costs.

As the objector correctly submitted, in a ruling delivered on 19 March 2026, the court addressed the application seeking a stay of execution of the judgment and decree delivered on 30 October 2025.

Since the delivery of the judgment, the objector filed an application dated 5 January 2026 seeking a stay of execution on similar grounds as herein done in the application dated 15 April 2026. The court cannot sit on appeal against its own orders. Such would be contrary to the due process and rule of law. By the objector revisiting the same matter and subject for stay of execution on the basis that the respondent is the judgment debtor and it has a lien to secure credit with the objector, such matter has since been addressed by this court

with finality. A review of the same matter is an abuse of the court process.

In the Supporting Affidavit of Ndonga dated 5 April 2026, great effort is made in seeking to have the judgment and decree of the court stayed. In ordinary practice, these are proceedings essentially between the claimant and the respondent, who has not shown any interest in these proceedings. The objector cannot act for and on behalf of the respondent in any manner. As the judgment debtor, the respondent must secure its interests, in particular, by ensuring that the court's decree is satisfied. Where indeed the respondent is indebted to the Objector, the rights of the claimant cannot be defeated or applied to negate the decree herein.

The respondent must render an account for itself and not through the objector.

The court, having addressed a similar application by the objector seeking a stay of execution, is *functus officio*. It cannot address a similar application by the objector. Under the ruling delivered on 19 March 2026, reasons for the dismissal of the application seeking a stay of execution are given.

The application dated 15 April 2026 is an abuse of the court process.

The auctioneer filed an application dated 9 April 2026 under the provisions of section 3A and 63 of the Civil Procedure Rules and Rule 9(a-c) of the Auctioneers Act, seeking the following:

- a) This court be pleased to issue Police Escort Orders to Joseph Mwangi Kingori t/a Bemac Auctioneers as he entered by breaking into the premises, if the respondent refuses to open the same voluntarily and cart away all the proclaimed goods at the premises of Kenya Marine Contractors (EPZ) Ltd, the respondent.*
- b) The officer in charge of Mbaraki Police Station does provide police escort and supervise the execution of this order or any of his officers above the rank of Assistant Inspector, under his command, to maintain law and order.*

The application is supported by Joseph Mwangi Kingori, a licensed class B auctioneer, who avers that the respondent, with the sole intention of defeating the ends of justice, has refused to allow the auctioneer to execute the court's decree by permitting entry and collection of the proclaimed assets. In a ruling delivered on 19 March 2026, the court allowed the

execution of the decree, but the respondent has remained adamant and refused the auctioneers entry to undertake their court-allocated duties.

Kingori avers that unless the orders sought are issued, the execution shall be unsuccessful. The respondent should meet the costs, which stand at Ksh. 2,775,984.

### **Determination**

Execution of a court decree is lawful. Unless set aside, stayed, or in any manner stopped by the court, a party holding a valid decree of the court has the right to proceed with execution. See

### **Munyite v Harambee Sacco**

**Society (Cause 671 of 2019) [2025] KEELRC 2459 (KLR).**

The respondent did not attend these proceedings.

The objector has repeatedly moved the court for a stay of execution, which is addressed by a determination. Stay of execution is dismissed.

In **Wayaffe v Toner Holdings Limited & another; Muthaiga Heights Management Plc (Objector) (Environment & Land Case E112 of 2022) [2025] KEELC 4453 (KLR)**, the court acknowledged that where an auctioneer

holds a valid Warrant of Attachment based on the decree of the court, the same should be executed through lawful means. In this case, the auctioneers are seeking the assistance of the police to break into the respondent's premises and cart away the proclaimed goods in execution of the decree if there is no voluntary adherence to the same.

In this case, the auctioneer deposed that he attempted to cart away the goods proclaimed on several occasions but was met with resistance from guards stationed at the respondent's gates and premises. Having moved the court for good cause and seeking police assistance to execute the warrants of attachment, the application dated 9 April 2026 is with merit.

**Accordingly, the applications dated 23 March 2026 and 15 April 2026 are hereby dismissed. Costs to the claimant assessed at Ksh. 150,000.**

**The application dated 9 April 2026 is allowed, and the following orders are issued:**

- a) Orders are hereby issued for the Police escort to Joseph Mwangi Kingori t/a Bemac Auctioneers as he enters by breaking into the respondent**

**premises, and to remove all the proclaimed goods at the premises of Kenya Marine Contractors (EPZ) Ltd, the respondent.**

**b) The officer in charge of Mbaraki Police Station shall provide police escort and supervise the execution of this order or any of its officers above the rank of Assistant Inspector, under his command, to maintain law and order as above (a) is executed.**

**c) The costs due to the auctioneer and the allocated police officers shall be met by the respondent.**

**Delivered in open court at Nairobi, this 14 day of May 2026.**

**M. MBARŪ  
JUDGE**

**In the presence of:**

Court Assistants: Catherine, Kemboi and Omar

..... and

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