



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Trailink Group Limited v Muchendu t/a Icon Auctioneers & another (Cause
2181 of 2014) [2025] KEELRC 586 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 586 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2181 OF 2014
B ONGAYA, J
FEBRUARY 27, 2025**

BETWEEN

TRAILINK GROUP LIMITED CLAIMANT

AND

JEREMIAH KIARIE MUCHENDU T/A ICON AUCTIONEERS APPLICANT

AND

**KENYA LONG DISTANCE TRUCK DRIVERS & ALLIED WORKERS
UNION RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday 27th February, 2025)

RULING

1. The Claimant filed the application dated 19.06.2024 through Wamwayi & Company Advocates. The application was for a declaration that the Auctioneers costs of Kshs. 640, 791.00 assessed by the Hon. Aziza Ajwang on 02.05.2024 in Miscellaneous E194 of 2023 be declared null and void; that ruling of 02.05.2024 be substituted with an order dismissing the respondent's bill of costs dated 14.08.2023 in Miscellaneous Application E194 OF 2023 forthwith; and the 2nd respondent to be ordered to pay costs. It was urged that Miscellaneous Application E194 had been filed while the applicant therein knew that proceedings were pending in the Court of Appeal and on 07.06.2024 in Civil Appeal No.88 of 2018 as consolidated with Civil Appeals No. 589 of 2019 and 780 of 2021 the Court of Appeal delivered a judgment overturning the judgment of this Court with all consequential processes including the execution proceedings subject of the assessment of costs sought to be set aside.
2. The application dated application dated 19.06.2024 was set for hearing on 24.07.2024. Mr Wamwayi Advocate attended for the applicant and the respondents were absent. The application not being opposed, it was allowed with no costs.



3. The Auctioneer filed the application by the notice of motion dated 25.07.2024 through Cheruiyot Collins and Company Advocates. The application was under Article 159 (1) (d) and Article 50 of *the Constitution*; section 1A and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya; Order 12 Rule 7, Order 17 rule 1 (1 and 2), rule 2(6) and Order 51 of the Civil Procedure Rules. The application sought prayers as follows:
 - a.(spent).
 - b. That the Honourable Court to set aside orders given on 24.07.2024 dismissing the suit for want of prosecution and reinstate the same for full hearing and determination.
 - c. That the Honourable Court to order that the 1st respondent's application dated 19.06.2024 do proceed for hearing and the same be determined on merits.
 - d. Costs in the cause.
4. The application was based upon the affidavit of Jeremiah Kiarie Muchendu and upon the following grounds:
 - a. That on 24.07.2024 the Court allowed the application dated 19.06.2024 for lack of defence or response by the auctioneer and the auctioneer is thereby prejudiced.
 - b. The orders of 24.07.2024 were made in absence of the auctioneer's advocate and a response because the advocate was not able to address the Court due to severe network problems.
 - c. The application of 19.06.2024 was not properly served denying the auctioneer opportunity to respond on time and adequately. The auctioneer became aware of the application from the 2nd respondent on 18.07.2024. A response was then prepared and was in the process of filing it on 24.07.2024.
 - d. The auctioneer will suffer irreparable loss if the orders of 24.07.2024 are not set aside. The claimant will not suffer any prejudice if the orders of 24.07.2024 are not set aside.
 - e. The auctioneer has exhibited a replying affidavit to the application of 19.06.2024 running into 20 paragraphs. It raises numerous issues such as whether the application was filed in the correct court file and proceedings; whether the auctioneer's costs were taxed upon valid court orders and was lawful; whether the auctioneer complied with all steps in the execution proceedings; and whether, the assessed costs should be set aside.
5. The claimant filed the replying affidavit of Peter Njenga, the Human Resource Services Manager, sworn on 07.11.2024. The claimant urged as follows:
 - a. The auctioneer, the applicant, has admitted that it became aware of the application dated 19.06.2024 on 18.07.2024. the applicant knew about or ought to have known of the hearing scheduled for 24.07.2024. For six days the applicant took no steps to prepare and attend Court.
 - b. The applicant's advocate has not sworn an affidavit to confirm that indeed on 24.07.2024 the Advocate had a serious network problem as alleged for the applicant.
 - c. The prayer as made is fatally defective because on 24.07.2024 no suit was dismissed.
 - d. The applicant and the advocate failed to attend Court on 24.07.2024 for no good reason shown.



6. The applicant and the claimant filed submissions on the application and the Court has considered the parties' respective cases. The Court returns as follows:
- a. The judgment of the Court of Appeal in Trailink Group Limited -Versus – Kenya Long Distance Truck Drivers & Allied Workers Union, Civil Appeal No.88 of 2019 consolidated with Civil Appeal Nos. 589 of 2019 and 780 of 2021 (Warsame, Kantai, and Mativo JJ.A) is duly exhibited on record herein. At paragraph 70 the Court of Appeal stated, “ 70. Accordingly, we find that this appeal is merited. We therefore allow this appeal, set aside the Judgment of the trial Court (Nderi J) dated 26.03.2017 and the rulings and orders dated 20th December 2019 and 8th October 2021 issued by Onyango J and all the consequential orders and substitute the same with an order dismissing ELRC No. 2181 of 2014. Each party shall bear its own costs for this appeal and the trial court”. As urged for the claimant in the application of 19.06.2024 it appears to the Court that the binding and finality effect of the Judgment by the Court of Appeal was that all consequential processes (flowing from this Court's judgment that was set aside) including the assessed auctioneer's costs (subject of the application of 19.06.2024) were all set aside. To that extent it appears that the applicant, the auctioneer would not have a triable issue in the face of that binding Court of Appeal decision.
 - b. The affidavit of service by Solomon Wamwayi Advocate sworn on 22.07.2024 on service of the application of 19.06.2024 shows that the application was duly served and it has not been challenged at all. The auctioneer, the applicant, has indeed confirmed that he was aware of the existence of that application of 19.06.2024. His advocate has not verified the alleged network challenges on 24.07.2024. Finally, the Court considers that the claimant filed the application in the appropriate primary file and it is sufficient that the order of 24.07.2024 is extracted and filed in the Miscellaneous Application E194 OF 2023 for closure of the issues therein.
 - c. In view of the foregoing the Court considers that the replying affidavit to the application by the claimant dated 19.06.2024 does not raise triable issues as to justify setting aside of the orders of 24.07.2024 allowing the application so as to afford the auctioneer applicant an opportunity to challenge the application.
 - d. The Court considers that indeed on 24.07.2024 there was no order dismissing a suit as per the prayers in the auctioneer's application and which finding operates as a catalysed to dismissal of the application.
 - e. Considering the history and all circumstances of the application, no costs will issue.

In conclusion the application dated 25.07.2024 filed for the auctioneer is hereby dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 27TH FEBRUARY, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

