



**Ramogi v Great Lakes University Kisumu; Odhiambo t/a Jenks Auctioneers (Interested Party) (Cause 2 of 2022) [2025] KEELRC 437 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 437 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 2 OF 2022  
NZIOKI WA MAKAU, J  
FEBRUARY 18, 2025**

**BETWEEN**

**PAUL ODHIAMBO RAMOGI ..... DECREE HOLDER**

**AND**

**GREAT LAKES UNIVERSITY KISUMU ..... JUDGMENT DEBTOR**

**AND**

**KENETH ODHIAMBO T/A JENKS AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. Great Lakes University (the Judgment Debtor) filed an application dated 1<sup>st</sup> October 2024, seeking the following orders:
  - i. Spent
  - ii. Spent
  - iii. Spent
  - iv. That the Decree Holder and the Interested Party be directed to present to the court and the parties a true account of the auction of motor vehicle registration number KBJ 277W (Double Cabin Toyota Hilux) and all monies paid so far toward the settlement of the court's decree.
  - v. That costs of this application be provided for.
2. The application was based on the grounds stated on its face and was supported by an affidavit sworn by Professor Hazel M. Mumbo. The Judgment Debtor contended that it had already paid at least Kshs. 830,000/- out of the total decretal sum and taxed costs of Kshs. 1,994,896/-, leaving an outstanding balance of Kshs. 1,164,986/-.



3. Furthermore, the Judgment Debtor asserted that, in an attempt to recover the balance, the Interested Party, acting on the instructions of the Decree Holder, had attached and sold its motor vehicle, registration number KBJ 277W, which had been valued at Kshs. 990,000/-. However, the Interested Party had failed to render an account as required under section 21 of the *Auctioneers Act* and Rule 6 of the Auctioneers Rules.
4. Despite this failure, it was the Judgment Debtor's assertion that, the Decree Holder and the Interested Party proceeded to attach another of its vehicles, an Isuzu Bus, registration number KBJ 852E unlawfully and irregularly. It averred that this second attachment was conducted without clarity on the outstanding balance. The Judgment Debtor further argued that, as a learning institution, such execution would cripple its operations.
5. In response the Decree Holder swore a replying affidavit dated 9<sup>th</sup> October 2024 in which he acknowledged receipt of Kshs. 830,000/- from the Judgment Debtor leaving an outstanding balance of Kshs. 1,164,986/-. He also confirmed that the motor vehicle registration number KBJ 277W (Toyota Double Cabin) had been sold via public auction, fetching Kshs 900,000/-.
6. However, the Decree Holder asserted that out of this amount, Kshs. 340,000/- was paid to the Interested Party as part of its costs, leaving a balance of Kshs. 560,000/-. He contended that the Interested Party's costs were to be borne by the Judgment Debtor. Therefore, after deducting the Kshs. 560,000/- from the outstanding balance of Kshs. 1,164,986/-, a further Kshs. 604,986/- remained unpaid. To recover this amount, the Decree Holder asserted that the attachment and sale of the Isuzu Minibus, registration number KBJ 852E, was justified, as the Judgment Debtor had, for two years, denied him the fruits of his judgment.
7. On its part the Interested Party filed a replying affidavit sworn by Mr. Kenneth Odhiambo Ojuro, in which it reiterated the contents of the Decree Holder's affidavit. It further confirmed that it had undertaken the execution process on behalf of the Decree Holder. On the 22<sup>nd</sup> January 2025 the court noted that all the parties had filed their written submissions.

### **Judgment Debtor's Submissions**

8. From the outset, the Judgment Debtor submits that it was kept in the dark regarding the amount realized from the auction and how the proceeds were applied towards settling the debt. It asserts that the Decree Holder's attempt to render an account through his replying affidavit has been done late in the day and has conveniently omitted evidence against the Decree holder. The Judgment Debtor highlights the fact that; the Interested Party's costs were not assessed, no proof of sale was provided, and there was no evidence that either the Decree Holder or the Interested Party informed it of the auction's outcome.
9. In support of the application, the Judgment Debtor identifies two key issues for determination:
  - i. Whether the auctioneer followed the law in execution of the decree.
  - ii. Whether the application is merited.
10. Regarding the first issue, the Judgment Debtor submits that the Interested Party violated section 21(3) of the *Auctioneers Act* by failing to indicate whether the sale of Motor Vehicle Registration Number KBJ 277W was subject to a reserve price. Additionally, the Judgment debtor submits that the advertisement of motor vehicle KBJ 852E Isuzu Bus was done 40 days after the date of attachment contrary to Rule 12(f) of the Auctioneers Rules, which mandates advertisement within seven days of



attachment. In illustrating this the Judgment Debtor emphasizes that while the attachment took place on 14<sup>th</sup> August 2024, the advertisement was only published on 25<sup>th</sup> September 2024.

11. With respect to the remittance of auction proceeds, the Judgment Debtor contends that the Interested Party contravened section 22(2) of the *Auctioneers Act*, which requires net proceeds to be remitted within 15 days of sale. In buttressing this the Judgment Debtor draws attention to Interested Party's communication with the Decree Holder's advocate 3 months after the sale. Moreover, the Judgment Debtor asserts that the Interested Party failed to produce a receipt proving the sale of movable property, as required by Rule 18(2) of the Auctioneers Rules.
12. In highlighting further contraventions, the Judgment Debtor submits that the Interested Party failed to remit the proceeds of the sale less the auctioneers charges to court together with an itemised account within 15 days, as mandated by Rule 18(4) of the Auctioneers Rules. It maintains that, given the execution involved a court decree, regular updates to the court were necessary, which by extension would have ensured it was informed of any outstanding balances. In respect of the sale, the Judgment Debtor submits that Motor Vehicle Registration Number KBJ 277W was sold significantly below its forced sale value of Kshs. 990,000/-. It highlights the fact that the Interested Party failed to submit any alternative valuation report indicating a lower forced sale value.
13. On the second issue, concerning the merit of the application, the Judgment Debtor submits that the Interested Party's blatant disregard for legal requirements speaks for itself. It maintains that the conduct of both the Decree Holder and the Interested Party justifies the relief sought in the application.

#### **Decree Holder's Submissions**

14. The Decree Holder submits that in the absence of a supplementary affidavit, his replying affidavit remained uncontroverted. He further submits that the application lacks merit, reiterating that he only received Kshs. 560,000/- after Kshs. 340,000/- was paid to the Interested Party. In justifying the attachment of the second vehicle, the Isuzu Bus the Decree Holder emphasizes that Kshs. 604,986/= of the decretal amount remains outstanding. He further asserts that sufficient account was rendered to the Deputy Registrar, explaining why the court sanctioned the second execution process.
15. In further opposition to the application, the Decree holder maintains that both he and the Interested Party have adequately accounted for the public auction and have established a factual and legal basis for attaching the Isuzu bus. He submits that the Judgment Debtor has approached the court with unclean hands, having failed to settle the debt, and therefore urges the court to review its order of the 4<sup>th</sup> October 2024, which released the Isuzu bus. In conclusion, the Decree Holder prays for the dismissal of the application with costs.

#### **Interested Party's Submissions**

16. The Interested Party submits that the court became functus officio upon delivering its judgment on 2<sup>nd</sup> November 2022. It asserts that courts are not debt collection agencies and that, once judgment is delivered, the responsibility for execution shifts to the auctioneer. In executing its mandate, the Interested Party emphasizes that it conducted the auction process in full compliance with the law. It maintains that its accountability extends only to the Decree Holder, as the instructing client, and not to the Judgment Debtor. To support its position, the Interested Party invokes the principle of functus officio, as articulated by the Court of Appeal in *Telkom Kenya Limited v John Ochanda* (suing on his



own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR, in the following terms:

“Functus Officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”

17. Additionally, the Interested Party submits that the present application obstructs the auction process and interferes with the Decree Holder’s right to realization of the decretal amount. It asserts that allowing such interference undermines the principle that litigation must come to an end. To reinforce this point, it relies on *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2007] eKLR wherein Bosire J.A stated:

“This is a doctrine which enables the courts to say litigation must end at a certain point regardless of what the parties think of the decision which has been handed down.”

18. Taking into account the details of the auction process outlined in the replying affidavits, the Interested Party urges the court to dismiss the application with costs.
19. The execution of court decrees and warrants remains a function of the Court. The auctioneers who execute decrees do so as officers of the court and in pursuance of court edicts and the execution process supervised by courts. As such, the Court is not functus officio as far as the execution is concerned. The only issue that cannot be revisited is the merits or otherwise of the decision made. At the stage of execution there must be involvement of the Court as noted in warrants issued, notice to show cause, stay of execution proceedings and the like.
20. The Auctioneer by failing to indicate whether the sale of Motor Vehicle Registration Number KBJ 277W was subject to a reserve price erred since the law requires the Auctioneer to indicate whether the sale is subject to a reserve price. Further, the advertisement of motor vehicle KBJ 852E Isuzu Bus was done 40 days after the date of attachment contrary to Rule 12(f) of the Auctioneers Rules. Rule 12(f) of the Auctioneers Rules mandates advertisement within seven days of attachment and whilst the proclamation of attachment was on 14<sup>th</sup> August 2024 in accordance with the notice dated 14<sup>th</sup> August 2024 and exhibited as HM-5(a) in the Affidavit of Hazel Miseda sworn on 1<sup>st</sup> October 2024. The advertisement was only published on 25<sup>th</sup> September 2024 one month 11 days after the due date. With respect to the remittance of auction proceeds, the Interested Party contravened section 22(2) of the *Auctioneers Act*, which requires net proceeds to be remitted within 15 days of sale. The remittance was made 3 months after the sale as shown by the Interested Party’s communication with the Decree Holder’s advocate 3 months after the sale. The Interested Party failed to produce a receipt proving the sale of movable property as required by Rule 18(2) of the Auctioneers Rules. The finding of this Court is that the execution meted out must of necessity be set aside on account of myriad breaches of the law. The requirements of section 23(1) were abridged by the Interested Party who is of necessity being referred by this Court for discipline to the Auctioneers Board. The Interested Party must surrender all the fees recovered at the sale of the Isuzu Pick Up to the Decree Holder to cover the decretal sum including the sum of Kshs. 210,000/- charged as auctioneers fees. It would seem it is in the interest of the Auctioneer not to realise the decretal sum so as to continue earning a standard sum of Kshs. 210,000/- per every attachment. The decree issued on 22<sup>nd</sup> November 2022 indicated a balance of Kshs. 607,436/- as owing. The sale of the Isuzu pick up valued at Kshs. 990,000/- should have more than satisfied the decree.
21. In my considered view, having failed to realise the full decretal sum in the execution meted in June 2024, the Decree Holder should have moved the Court to obtain leave to execute fresh warrants in terms



of Rule 12(2)(b) of the Auctioneers Rules. The Auctioneer and the Decree Holder were required to render accounts and strictly adhere to the *Auctioneers Act* and the Rules thereunder. Having failed to do the correct thing, both the Decree Holder and the Interested Party were guilty of misdeed the court will mulct them with costs of this application to be borne jointly and severally. A copy of this Ruling together with the Application to be forwarded to the Auctioneers Board by the Deputy Registrar of this Court for their further action on the Auctioneer Mr. Kenneth Odhiambo t/a Jenks Auctioneers of PO Box 325-40100 Kisumu.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 18<sup>TH</sup> DAY OF FEBRUARY 2025**

**Nzioki wa Makau, MCI Arb.**

**JUDGE**

