



REPUBLIC OF KENYA



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

**Gakumbi v Africare Limited (Employment and Labour Relations Cause
180 of 2020) [2025] KEELRC 873 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 873 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 180 OF 2020
MN NDUMA, J
MARCH 13, 2025**

BETWEEN

ALFRED MURIITHI GAKUMBI CLAIMANT

AND

AFRICARE LIMITED RESPONDENT

RULING

1. The Applicant filed Notice of Motion application dated 23/8/24 seeking an order in the following terms:-
 - a. Spent
 - b. Spent
 - c. An order be issued compelling the Respondent to release the Applicant's ambulance Registration Number KCK 290H forthwith pending the hearing and determination of this application
 - d. An order be issued extending the notice period beyond the 15-day period in the proclamation notice, to enable the Applicant to use the ambulance for the days the ambulance has been in possession of the Respondent for the purpose of recouping the lost income
 - e. An order be issued directing the Respondent to compensate the Applicant for the loss of business suffered due to the unlawful attachment and detention of the ambulance, which has been critical in generating income for the Applicant
 - f. The costs be borne by the Respondent.
2. The application is grounded on grounds (a) to (f) in the Notice of Motion which may be summarized that the Applicant is the registered owner of the ambulance Registration No. KCK 290H which was



unlawfully attached by Auctioneers acting under instruction of the Respondent before the expiry of the 15 day notice period provided for in the warrants of attachment. The Applicant was not served with the requisite proclamation notice or warrants of attachment prior to the unlawful seizure of the ambulance which contravenes the provisions of the *Auctioneers Act*.

3. The ambulance is a critical income generating asset for the Applicant and its continued detention is causing the Applicant substantial financial loss and impairing the Applicant's ability to settle the outstanding debt.
4. The Applicant is committed to settling the debt owed to the Respondent and has proposed a payment plan to offset the amount.
5. That the application be granted.
6. In the Supporting Affidavit it is stated that the notice given of 15 days was to lapse on 27/8/2024 but attachment was done prior to the expiry of the date.

Replying Affidavit

7. The Respondent vide the replying affidavit of Alfred Gakumbi Muriithi deposes that the procedure followed by the instructed auctioneers were above par as they issued the proclamation notice to the Respondent/Applicant on 13th August 2024 but the Respondent/Applicant failed to acknowledge service of the same when being served. That had the ambulance been critical income generating asset, the Respondent/Applicant would have provided the applicant with proof of the same to allow the ambulance released back to enable them fully utilize it. That if the Applicant was genuine with its offer to settle, they would have offered lumpsum deposit and balance be paid in installments.

Determination

8. The court has considered deposition by both parties together with submissions filed thereof. The Applicant submits that Rule 12(1)(b) of the Auctioneers Rules mandates that an Auctioneer must prepare a proclamation notice indicating the value of the items to be attached. The proclamation should be served upon the owner of the goods or a certificate issued to that effect if the owner is not available. Furthermore, Rule 12(1)(c) requires the Auctioneer to serve a seven-day notice in writing allowing the owner an opportunity to redeem the attached goods by paying the outstanding amount. However, no notice was served and the ambulance was seized on 21/8/2024, before the expiry of the prescribed 15-day notice period indicated in the warrants of attachment. That the premature attachment coupled with lack of a valid proclamation notice violates the *Auctioneers Act* and infringes the Applicant's rights. That the attachment was also unlawful as it violates section 44(1) (iii) of the *Civil Procedure Act* Cap 21 laws of Kenya that provides that the "tools and implements of a person necessary for the performance by him of his trade and profession" shall not be liable for attachment.
9. That the court in *INVESCO Assurance Company Ltd Kinyanjui Njuguna & Company Advocates* [2020] eKLR held that tools necessary for a person's trade are not subject to attachment. That by disregarding the exemption the Respondent violated the law and also caused a cessation in the Applicant's income generating activities. Applicant prays the application to be granted.
10. The Respondent relying on its replying affidavit dated 4/9/2024 and submissions states that firstly the firm of Gikere and Vadgama Advocates is not properly on record for the Respondent/Applicant and therefore the application is not property before court.
11. Secondly, the Claimant/Respondent states that the attachment of the ambulance through the warrants of attachment dated 12/8/2024 was lawful in that the proclamation notice dated 13/8/24 was issued



by the Auctioneers and served on the Applicant by the Auctioneers but the Applicant declined to sign the same as indicated by the Auctioneers.

12. The Claimant/Respondent relies on the case of *National Industrial Credit Bank Limited versus S.K. Ndegwa versus Ndegwa Auctioneers* [2005] KLR where the court of Appeal pronounced itself on what constitutes a lawful proclamation by making the following assertion in regard to the attachment of movable goods:

“There is a presumption of service as stated in the process server’s report, and the burden on the party questioning it to show that the return is incorrect. But an affidavit of the process server is admissible in evidence and in the absence of contest, it would normally be considered sufficient evidence of the regularity of the proceedings. But if the fact of service is denied, it is desirable that the process server should be put into the witness box and opportunity of cross-examination given to those who deny the service.”

13. The Respondent/Claimant states that the Applicant’s attempt to invalidate the attachment on grounds of purported non-service of the proclamation notice is controverted by the established legal position in the said case.
14. The Respondent/Claimant further relies on the case of *Black Wood Hodge (Kenya) Ltd versus Leed Gasoline Tank cleaning Sam and Chege (K) Ltd* [1980] KLR 749 in which the court stated that section 44(1) of CPA safeguards personal tools essential to one’s trade not income generating assets of corporate entities. That the ambulance does not qualify for exemption as it is not a personal livelihood tool but a business asset. That invoking section 44(1) of CPA would shield corporate assets improperly from attachment. That the application lacks merit and it be dismissed.
15. In the present matter, the court is satisfied that the application is properly before court and will not delve on technicalities that do not go to the merit of the application.
16. The court is satisfied that the ambulance is not a personal livelihood tool within the meaning of section 44(1) of CPA but a business asset of the Respondent/Applicant. The court is satisfied also that the Applicant was served with proclamation notice but declined to sign the same. However, the Applicant has satisfied the court that upon service of warrant of attachment dated 12/8/2024 the Claimant did not provide the Applicant with a 7-day notice opportunity to satisfy the decretal sum despite the uncontroverted willingness by the Applicant to make payments on terms.
17. The Applicant has however not placed before court the proposal intended to settle the decretal sum.
18. Acknowledging that an ambulance is a critical asset of the Respondent to raise funds to pay the decretal sum, the Applicant is placed on strict terms as follows upon a finding that the application lacks merit:
- i. That the Applicant to offset the decretal sum in three equal instalments, the 1st instalment to be within 14 days of this Ruling.
 - ii. That the Respondent/Claimant to release the ambulance forthwith upon payment of requisite costs to the Auctioneers plus the first instalment.
 - iii. That in the event of failure to pay any one instalment, execution to proceed.

DATED AT NAIROBI THIS 13TH DAY OF MARCH 2025

MATHEWS NDUMA

JUDGE



Appearance:

Simon Muoki for Respondent/Applicant

Mr. Githiomi for Respondent/Claimant

Mr. Kemboi – Court Assistant

