



Radar Limited v Ngocho & 8 others; Musya t/a Makuri Auctioneers (Interested Party) (Miscellaneous Application E076, E077, E078, E079, E080, E081, E082, E083 & E084 of 2024 (Consolidated)) [2025] KEELRC 754 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 754 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

**MISCELLANEOUS APPLICATION E076, E077, E078, E079,
E080, E081, E082, E083 & E084 OF 2024 (CONSOLIDATED)**

M MBARŪ, J

MARCH 6, 2025

BETWEEN

RADAR LIMITED APPLICANT

AND

PHOEBE MNAVU NGOCHO 1ST RESPONDENT

APOLLO ROGE MGHONE 2ND RESPONDENT

PAUL MATENGE MWADIME 3RD RESPONDENT

PHILIP NGAYAYA MWAKWENDA 4TH RESPONDENT

GEORGE MALEKWA OKOTH 5TH RESPONDENT

JOSIAH MRIANGULO MWAMBINU 6TH RESPONDENT

GRANTON MWARINDA MWAMBURI 7TH RESPONDENT

KAREN NALIAKA WASIKE 8TH RESPONDENT

WINFRED BARAKA MWAKINA 9TH RESPONDENT

AND

JOEL TITUS MUSYA T/A MAKURI AUCTIONEERS INTERESTED PARTY

RULING

1. The applicants contest that they were forced to pay storage charges for the attached motor vehicles following the respondent and interested party's unlawful execution. On 19 December 2024, the court



issued orders directing the respondent and interested party to release the vehicles unconditionally, but there was no immediate release until 23 January 2025.

2. Through the Affidavit of Brayan Mwangi, a director of Blackbird Storage and Auction Yard Limited (Blackbird), he avers that on 13 August 2024, he received instructions from the interested party to book motor vehicle registration No. KBV 250R, an Isuzu Dmax, following the court warrant in ELRC No.E010 of 2023 Voi.
3. Mwangi avers that Blackbird is a third party in this matter and has been storing the motor vehicle following the law. On 24 January 2025, he received a Court Order to release the motor vehicle, and upon consultations with the instructing client, he did release the vehicle. However, there were storage charges of Ksh. 96,000 for Ksh.500 per day and Ksh.1,000 for handling fees and VAT, which are due and payable.
4. The respondent's advocate submitted that the court must address when the Court Orders seeking the release of the subject motor vehicle were served. The applicant did not serve the Orders until 24 January 2025, and upon receipt of the orders, the motor vehicle was released and, hence, should pay the storage charges.

The applicant did not attend or file any written submissions.

5. The applicant filed a reference dated 5 September 2024 seeking the interested party's joinder in these proceedings. The applicants were also seeking the unconditional release of motor vehicle registrations KBV 250R, KCQ 743A, and KFC 918K.
6. In a ruling delivered on 19 December 2024 the court allowed the application and held that;
... the applicant(s) cannot pay the fees claimed by the interested party or the storage charges. These must be resolved between the respondent and the interested party.
7. The gist of these orders was that the respondent could not justify the execution proceedings outside the provisions of Section 94 of the *Civil Procedure Act*. Hence, whatever costs accrued due to an illegal and invalid execution process can only be paid for by the respondent(s) and not the applicant.
8. The question of when the court orders of 19 December 2024 were served is put into perspective. The same is not due as between the applicant and the interested party or third party, Blackbird, but between the respondent and the interested party and Blackbird.
9. The applicant is, therefore, removed from paying any costs arising from the execution or storage charges.
10. The costs Blackbird claims as a third party and not the interested party cannot be sanctioned in these proceedings. These must be settled between the instructing party, the respondent and the interested party.

Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

