



**Sankale v Maasai Mara University & another (Petition
E097 of 2021) [2025] KEELRC 1380 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1380 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E097 OF 2021
NJ ABUODHA, J
MAY 9, 2025**

BETWEEN

SPENCER OLOLCHIKE SANKALE PETITIONER

AND

MAASAI MARA UNIVERSITY 1ST RESPONDENT

INDOMITABLE AUCTIONEERS 2ND RESPONDENT

RULING

1. The Applicant filed a Notice of Motion Application dated 6th December, 2024 brought under Articles 22 and 23 of the *Constitution*, Section 12(3) of the *Employment and Labour Relations Court Act* and Sections 1A,1B, 3A and 63(e) of the *Civil Procedure Act*. The application is seeking for orders that: _
 - a. Pending hearing and determination of this application there be an order of temporary injunction restraining the Respondents, their agents, employees, servants or any other person or entity claiming through them from alienating, selling by public auction or in any way disposing off the motor vehicle Registration number KCP 274K-Toyota Corolla.
 - b. This court be pleased and do issue an order compelling the Respondents to release the motor vehicle Registration number KCP 274K-Toyota Corolla back to the Applicant forthwith.
 - c. This court be pleased and do issue an order of permanent injunction restraining the Respondents, their agents, servants or any other person or entity claiming through them from executing decrees and orders against the Applicant.
2. The Application was supported by the grounds set on the face of the Application and supporting affidavit sworn by Samuel K. Partoip the Registrar (Administration and Strategy) of the Applicant who averred that:



- i. In a judgment dated 5th July, 2024 this court delivered the judgment in this matter in which it allowed the Petitioner's Amended Petition in the terms of damages for unfair termination of 12 months at Kshs 3,1000,716/=, certificate of service and costs and interests. That the amount was subject to taxes and statutory deductions.
 - ii. The Petitioner engaged the 2nd Respondent to recover the said decretal sum which obtained warrants of attachment dated 19th November, 2024 for the said decretal sum. That the 2nd Respondent further issued a fee note dated 2nd December, 2024 for a whopping Kshs 329,904/= for their services.
 - iii. The Applicant is a public university and therefore a government entity and as such execution of decrees and orders against it are barred under Order 29 Rule 2(b) of the Civil Procedure Rules. That the Respondents proceeded to unlawfully, irregularly and illegally proclaim, seize and confiscate the Applicant's motor vehicle Registration number KCP 274K-Toyota Corolla on 2nd December, 2024 for subsequent sale by auction to recover the decretal sum.
 - iv. Despite the illegality in the process of execution the Applicant proceeded to settle the decretal sum as proclaimed, less statutory deductions as ordered by this court on 4th December, 2024. That the Applicant went further and settled the 2nd Respondent's auctioneering fees on even date as exorbitantly billed by the 2nd Respondent.
 - v. However, the Respondents have refused to release the seized/ detained motor vehicle for no good reason and the University continues to incur additional costs as it is forced to seek for alternative means of transport which costs are a direct result of the continued detention.
 - vi. Unless therefore this matter is urgently heard and orders sought herein granted, the Applicant will continue to incur extra expenses and waste the public funds at the expense of the unjustifiable, illegal and malicious actions of the Respondent to the greatest detriment to the tax payers.
3. In reply the Petitioner filed its Replying Affidavit of the Petitioner herein sworn on 2nd January, 2025 who averred: -
- i. That court delivered judgment as illustrated above and it issued decree on 7th November, 2024 and subsequently issued warrant of attachment on 19th November, 2024 which was served on the Applicant. That the Applicant engaged in correspondence with the counsel and undertook to comply with the decree as they did not intend to proffer an appeal.
 - ii. That the Applicant failed to make good their commitments leading to the attachments on 2nd December, 2024 after issuance of proclamation dated 21st November, 2024. That the vehicles attached were KCP 274K Toyota Corolla (in Narok) and KCP 678K Toyota Hiace (in Nairobi). That immediately after the attachments the 1st Respondent called his counsel on record in his presence through its Senior Legal Officer Ms. Mercelyne Njoroge. That during the tripartite call the Applicant confirmed that it had wired payment of the decretal amount and auctioneers fees but had not paid interests and costs as per the decree. The Applicant also confirmed that it had not issued certificate of service.
 - iii. That further during the tripartite call the Applicant undertook to clear the balance being interests, costs and issue certificate of service the following day being December, 3, 2024 once officers returned to the Applicant's campus in Narok as they were in Nairobi at the time of the tripartite call.



- iv. That on strength of this professional commitment and goodwill it was agreed by the parties that the Applicant's car being KCP 678K Toyota Hiace attached in Nairobi be released back to the Applicant immediately, whilst the second vehicle subject of application being KCP 274K Toyota Corolla be released upon the Applicant making good their professional commitment the following day.
 - v. That to confirm this agreement and undertaking the Applicant requested tabulation of interest and prior-served bill of costs which was promptly sent to them via WhatsApp and the same affirmatively acknowledged. That in the tripartite call it was agreed that interest be calculated and sent to the Applicant immediately and the same was done.
 - vi. That the Applicant instead of making good its commitment and demonstrate goodwill opted to file the instant application. That the application was an abuse of court process and amounts to waste of public funds. That this court is not a taxing court and had become functus officio when it delivered its judgment on 5th July, 2024 hence the application was defective for want of jurisdiction.
 - vii. That they have reiterated to the Applicant severally that they are willing and ready to release the attached motor vehicle once they make good their commitment referenced above and comply with the express terms of this court's judgment which has been ignored.
4. The Application was disposed of by written submissions.

Applicant's Submissions

5. The Applicant's advocates Prof. Tom Ojienda & Associates Advocates filed written submissions dated 6th February, 2025 and on the issue of the law on execution against government entities/organs counsel submitted that the Applicant is a public university and therefore a government entity. That execution of decrees and orders against it is barred under Order 29 Rule 2(b) of the *Civil Procedure Rules*. Counsel relied on the case of *Five Star Agencies Limited v National Land Commission & National Bank of Kenya* (Nairobi Court of Appeal Civil Appeal No. E290 of 2023) on execution against government.
6. Counsel submitted that the court concluded that execution against government would be to seek an order of mandamus to compel the relevant person in the government to settle the decree in question. That the Respondent's purported execution through sale by public auction under Order 22 of the *Civil Procedure Rules* of the governments assets was thus illegal, null and void since the same was prohibited in law. That in any event the Applicant settled all the decretal amount less statutory deductions as ordered by the court and the auctioneers fees hence there was nothing to execute against the Applicant.
7. Counsel submitted that the Respondents lacked any basis to refuse to release the subject vehicle to the Applicant after receiving all the decretal sum and auctioneers' fees as drawn. That the Petitioner was yet to tax his bill of costs and in an effort to save judicial time parties engaged and it was agreed on a no prejudice basis that the Applicant to pay Kshs 700,000 for costs and interest upon release of the subject car. That the Respondents got greedy and insisted on payment of extra unexplained fees to the auctioneer and additional interest on the decretal sum which sum was never awarded.
8. Counsel submitted that the Respondents refused to release the subject vehicle and thereby voiding the initial non-binding gentleman's agreement. That the Applicant now does not wish to engage the Respondents on out of court settlement. There is no certificate of taxation on cost and interest in place and therefore it is premature and unreasonable for the Respondents to demand for costs and interest before release of the Applicants vehicle.



1st and 2nd Respondents' Submissions

9. The Respondents' advocates Dr. Komolo & Partners Advocates filed written submissions dated 11th March, 2025 and counsel submitted that the parties engaged in out of court settlement after judgment of this court which led to settlement of the decretal sum. That what was pending was the interest and costs which the Applicant consented to paying only to change halfway and file this application.
10. Counsel submitted that at no point did the Respondents decline to release the motor vehicle. That the basic issue was that the Applicant would release the pending balance as they come for motor vehicle. That the application was a pure breakdown in communication and show of bad faith and should never have been filed in the first place. Counsel relied on article 159(2) (c) of the Constitution on resolution of disputes without undue regard to technicalities. That this extends to mediating the parties especially where a court of law is invited to basically relitigate an issue as in the instant application as the decretal sum has indeed already been paid.
11. Counsel further urged the court to invoke its inherent powers to have the parties record a consent or arrive at a settlement as the pending issues are already discussed and agreed. That inviting the court to write a ruling on the pending issue when the decretal sum has been settled amicably amounts to waste of judicial time. That the Applicant's reliance on Civil Procedure Rules and Government Proceedings Act at this stage can only be a delaying tactic that does not go to the substance of the case. That it would have the unintended effect of pushing the Respondents to start the taxation process wasting the court's time over issues that are already settled.
12. Counsel submitted that the Applicant has on its own motion already settled the decretal sum which was initiated by the very proceedings it is now questioning vide this application. That it must be stopped.

Determination

13. The Applicant seeks injunctive orders against the auction and sale of its motor vehicle Registration number KCP 274K-Toyota Corolla by the Respondents herein. It is common ground that the Applicant already settled the decretal sum and auctioneers' fees and what is remaining is the costs and interests and issuance of certificate of service to the Petitioner.
14. From the documents on record parties had agreed to have the costs and interests to be Kshs 700,000/= after the Respondents had shared their bill of costs with the Applicant. What is not clear is whether the Applicant was to make the said payment before the car was released or the car was to be released for the payment to be made. The Applicant has relied on Order 22 Rule 2(b) on execution against government it being a public university. This court notes that the moment the Applicant decided to settle the decretal sum and auctioneers' fees which was initiated from the same process it is challenging, the applicant was estopped from challenging the rest of the process on costs and interest.
15. To this court the parties were bound to finalize the last issue of the costs and interests as they had agreed and settle the matter out of court. The Applicant states that they are no longer interested in the previous agreement on costs and interests and requests that the Respondents proceeds to tax the bill of costs in court. It then requests for this court's intervention to have its attached motor vehicle released to it.
16. The factors guiding grant of interlocutory injunctions was well established in *Giella v Cassman brown* [1973] EA 358 where the following principles were set out:
 - a) That the applicant must establish a prima facie case with probability of success;



- b) That the applicant must demonstrate that he stands to suffer irreparable harm if the order is withheld; and
- c) If the court is in doubt, it should determine the application on a balance of convenience.
17. On the issue of prima facie case it was defined by the Court of Appeal in *Mrao Limited v First American of Kenya limited & 2 others* [2003] e KLR as follows: -
- “...in civil cases is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
18. In this case the Respondent threatens to auction and sell the Applicant’s motor vehicle Registration number KCP 274K-Toyota Corolla to recover costs and interest on the decretal sum herein. The Applicant has not preferred an appeal against the judgment hence the terms of the judgment have to be obeyed to the letter. The Applicant settled the decretal sum but not the costs and interests as well as issuance of certificate of service as per court’s directions.
19. The Applicant therefore has no chances of success since no appeal has been preferred against the judgment of the Court.
20. On the issue of irreparable harm, in as much as the Applicant has illustrated that it continues to incur transport costs due to detention of the car, the Respondents are also entitled to the fruits of their judgment which includes the costs and interests as well as certificate of service. This court agrees that the sale of the motor vehicle may cause an irreparable harm to the Applicant as well but it has not obeyed the court’s directions.
21. In conclusion the application dated 6th December,2024 is found without merit and the same is hereby dismissed with costs.
22. It is so ordered.

DATED AT NAIROBI THIS 9TH DAY OF MAY, 2025

DELIVERED VIRTUALLY THIS 9TH DAY OF MAY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

