



REPUBLIC OF KENYA



KENYA LAW
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**Safaricom Plc v Mwhiki & 2 others (Miscellaneous Application
E165 of 2021) [2025] KEELC 3605 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 3605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E165 OF 2021**

JG KEMEI, J

FEBRUARY 20, 2025

BETWEEN

SAFARICOM PLC APPLICANT

AND

RUTH MWIHIKI 1ST RESPONDENT

ANFIELD AUCTIONEERS 2ND RESPONDENT

AUTOTECH MOTOR ASSESSORS LTD 3RD RESPONDENT

RULING

1. It is the application dated the 13/6/24 brought under Order 51 of the CPR, Sections 1A and 3 of the CPA seeking orders THAT;
 - a. Spent
 - b. Spent
 - c. There be a declaration that the Applicant has fully satisfied the judgment and decree of 30/8/23.
 - d. A permanent injunction to issue restraining the Respondents and their agents, servants or assigns from attaching the Applicant's property or in any other manner executing the satisfied judgment and decree dated 30/8/23.
 - e. Costs of the application be borne by the respondents.
2. The application is based on the grounds annexed thereto and the supporting affidavit of Samwel Mwenja Ndaba, the inhouse Counsel of the Applicant. He states that judgement was delivered in favour of the 1st Respondent on 30/8/23. Thereafter the 1st Respondent proceeded to extract warrants of attachment for execution in satisfaction of the taxed decretal amount in the sum of Kshs 2,642,920/-.



In furtherance of the execution instructions, the 2nd respondent proclaimed and attached the applicants Motor Vehicle No KCP 841J valued at Kshs 3.1 Million as at 26/10/23. The said vehicle was then valued by the 3rd Respondent at Kshs 1.8 Million. That M/S Mariday Motors, a prominent Motor Vehicle dealer in Nairobi has advised that the value of the Motor Vehicle as at the date of attachment is not less than Kshs 3.0 Million. He avers that the vehicle was sold at a gross undervaluation. That the 1st Respondent has applied for reissuance of the fresh warrants of attachment for the balance of the decretal amount in the sum of Kshs 1,019,576/-. On the 29/5/24 the 2nd Respondent issued a 7-day proclamation notice for Motor vehicles which warrants the Applicant finds oppressive prejudicial and illegal having already attached the applicants Motor Vehicle of sufficient value to satisfy the judgment and the decree. That unless the orders are granted the Applicant will suffer the execution of a judgment already satisfied.

3. The Plaintiff opposed the application through the grounds of opposition dated the 26/6/24 on the grounds
 - a. That the application before the Court is wrongly instituted as the same seeks to introduce new parties to the suit.
 - b. The orders sought are of permanent nature and should be heard by a judge for they touch on the decree substantially
 - c. The application before the Court which is a miscellaneous application is misplaced and lacks merit
 - d. A stay of execution and injunction cannot be issued through a miscellaneous application where a substantive suit exists.
4. David Gikunda Miriti, the Counsel representing the 1st Respondent swore a replying affidavit of 26/6/24 and reiterated the contents of the grounds of opposition and urged the Court to dismiss the application on grounds that; the application is unprocedurally before the Court having been brought through a Miscellaneous application in a substantive suit; the orders sought are substantive in nature; new parties have been introduced; they have not been enjoined with the leave of the Court; the decretal amount remains unsatisfied; the 2023 valuation cannot be relied as it was done one year ago;
5. Parties filed their written submissions which I have read and considered.
6. The key issue is whether the application is competent/merited.
7. By way of background this application has been made in a Misc application No 165 of 2021, the parties being Safaricom PLC Vs Ruth Mwihiki, Anfield Auctioneers & Autotech Motors Assessors Limited 2 others.
8. The current file as I can glean from the record is ELC No 165 of 2021- Ruth Mwihiki Vs Safaricom Limited. In this file the Court determined the suit vide its judgment of 30/8/23 in favour of the Plaintiff as following;
 - a. General damages for trespass for Kshs 2,000,000/-
 - b. The Defendant shall bear the costs of the suit
9. A Miscellaneous Application refers to a request made to the Court that does not fall under a specific category or procedure. It is used for various purposes such as seeking interim relief, clarification on existing orders, or addressing administrative matters. The issues brought under Misc. application is fairly straightforward and non-contentious in nature. However, there is an increasing tendency for



parties to inundate courts with all manner of pleadings brought under Misc. Applications which serve to confusate matters. An example is the current application which is christened a Misc Application in a main suit. This practice is not to be encouraged.

10. That said, the Applicant has not explained to the Court why the application was not filed in the same file ELC 165 of 2021. Even if it was to be filed as a Misc. Application, the same should have been given a separate number as it is taken to be a distinct cause.
11. That notwithstanding, I find that gist of the application centres on the question of execution of the decree issued by this Court. I hasten to note that the Plaintiff has not shown any prejudice that it has suffered. Guided by the provisions of Art 159(2) (d) of the Constitution, the Court finds that the application, notwithstanding its inelegant drafting is competently before Court .
12. Is the application merited? The Defendant has urged the Court to make a declaration that the it has fully satisfied the decree of 30/8/23. The Defendant complained about the valuation of the Motor Vehicle that was attached and sold in an auction towards the satisfaction of the decree. According to the Defendant, the Motor Vehicle had been valued in October 2023 and the realized a value of Kshs 1.9 Million which it terms as a gross undervaluation. In the contrast the Plaintiff asserts that the vehicle was sold at Kshs 1.9 Million which was the highest bid in the auction. I have seen the bids ranging from Kshs 1.7 – Kshs 1.9 Million. The valuation dated the 8/4/2024 which returned a market value of Kshs 1.8 Million and a forced value of Kshs 1.6 Million was also placed before the Court. It is not disputed that the vehicle was sold at Kshs 1.9 Million which according to the bids was the highest at the auction. The Defendant has not shown a contrary value for the vehicle. The Court finds that the valuation of Kshs 3.0 was done in October 2023 and not as at the time of attachment and auction of the Vehicle.
13. The Court finds that the question challenging the valuation of the vehicle is not supported in evidence to enable the Court pronounce a declaration. He who alleges must prove. It was incumbent upon the Defendant to prove that there were higher bids at the fall of the hammer and that the Plaintiff or for that matter the auctioneer elected to sell to the lowest bidder.
14. The Defendant has failed to lead evidence on the steps it took since the proclamation and the attachment notices were issued by the Plaintiff to challenge the sale of the Motor Vehicle through public auction and this application appears to have come too late in the day after the fall of the hammer.
15. Is the Defendant entitled to orders of permanent injunction restraining the Plaintiff from attaching the defendant’s assets in satisfaction of the decree? The Defendant having failed to proof that it has settled the decretal amount, the Court finds that it has not established a prima facie case with a chance of success and for that matter I am unable to grant the orders permanently injunctioning the decree holder from pursuing the settlement of the decree in her favour.
16. For the above reasons, I find that the application is unmerited. It is dismissed with costs in favour of the Plaintiff.
17. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Coram

Marriete HB Gikunda for the Respondent/Plaintiff



No attendance for the 1st -3rd Applicants/Defendant

CA- Yvette

