



Kenneth Odhiambo t/a Jenks Auctioneers v Ramogi & another (Cause 2 of 2022) [2023] KEELRC 2225 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2225 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 2 OF 2022
S RADIDO, J
SEPTEMBER 27, 2023**

BETWEEN

KENNETH ODHIAMBO T/A JENKS AUCTIONEERS APPLICANT

AND

PAUL ODHIAMBO RAMOGI CLAIMANT

AND

GREAT LAKES UNIVERSITY OF KISUMU RESPONDENT

RULING

1. The Court awarded the Claimant a total of Kshs 1,844,896/- on November 2, 2022. The Respondent did not settle the award and the Claimant moved to execute.
2. On February 22, 2023, the parties reached a consent to have the award settled in instalments.
3. The instalments were not forthcoming as agreed and on April 27, 2023, Kenneth Odhiambo t/a Jenks Auctioneers (the applicant) moved the Court seeking orders:
 - (1) ...
 - (2) That the judgment debtor be and is hereby ordered to immediately deliver its motor vehicles registration numbers KBJ 276 and KBZ 308Z and/or KBJ 277 W and/or KBJ 325W to the applicant's yard at Sparco Motor Garage in Tom Mboya estate in Kisumu, off Nyerere Road opposite Life Ministries or at Kondele Police Station, Kisumu.
 - (3) That the applicant be and is hereby allowed to use minimal and reasonable force and enter any premises where the judgment debtors proclaimed assorted furniture, electronics, and motor vehicle registration numbers KBJ 276 and KBZ 308Z and/or KBJ 277 W and/or KBJ 325W



may be stored or parked and take immediate possession thereof in execution of the decree issued on 10/11/2022.

- (4) That the Officers Commanding Central Police Station, Kisumu and/or Kondele Police Station, Kisumu and/or Miwani Police Station, and/or Mamboleo Police Station be and are hereby directed to provide appropriate police escort, security, and supervision to the applicant in fulfilment of orders (2) and/or (3) above.
 - (5) The costs of this application be borne by the judgment debtor.
4. The grounds advanced in support of the application were that when the Claimant moved to execute the decree of the Court by proclaiming the judgment debtor's properties, it paid part of the decretal sum after which the parties entered into a consent to liquidate the balance in instalments; that despite the consent, the judgment debtor had failed to make payments from March 2023 and that there was apprehension of violence if police assistance was not provided to proceed with the execution.
 5. When the application came up on May 25, 2023, the judgment debtor informed the Court that a payment of Kshs 200,000/- had been made that morning.
 6. The Court directed the judgment debtor to make a further payment of Kshs 200,000/- before June 16, 2023, with further directions set for June 19, 2023.
 7. The Court gave the directions on June 20, 2023 including that the judgment debtor files a response within 7 days and that it makes payment of Kshs 200,000/- before the end of June 30, 2023, in default, execution to proceed. The parties were also directed to file and exchange submissions.
 8. The judgment debtor filed a replying affidavit in opposition to the Motion on July 28, 2023 in which it was deponed that the failure to satisfy the decretal sum was due to a difficult financial situation engendered by a multiplicity of suits and reduced student enrolment; that Kshs 400,000/- had been paid in May and June 2023; the proclaimed properties were crucial to the running of the University and that the application was defective because it had not been made through a miscellaneous application as contemplated by the Auctioneers Rules.
 9. The Respondent/judgment debtor filed its submissions on September 23, 2023 while the applicant's submissions were not on record.
 10. The Court has considered the application, affidavits, and submissions.
 11. The parties entered into a consent on the settlement of the decretal sum. The consent was adopted by the Court on February 23, 2023.
 12. The judgment debtor has failed to comply with the terms of the consent. It explains the failure as a difficult financial situation exacerbated by reduced student enrolment.
 13. The Claimant is entitled to the fruits of the judgment. The Court has given the parties sufficient time to agree on modalities of settlement. There has been no agreement.
 14. In proceeding with the execution, the Auctioneers Rules provide on how the Court should be moved. The auctioneer/applicant has however disregarded the mode for invoking the Court's jurisdiction. No explanation has been tendered. He has not filed submissions as agreed and directed.
 15. The Court is, therefore, constrained to decline the application dated April 27, 2023.

Conclusion and Orders

16. In consideration of the above, the Court orders the Motion dated April 27, 2023 dismissed.



17. Each party to bear own costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 27TH DAY OF SEPTEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant ROW Advocates LLP

For Claimant ROW Advocates LLP

For Respondent Owiti, Otieno & Ragot Advocates

Court Assistants Chrispo Aura/Everlyne Nyaboke

