



REPUBLIC OF KENYA



**Nayer v Mohamed & another (Environment & Land Case E027 of 2023)  
[2024] KEELC 6112 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6112 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E027 OF 2023  
NA MATHEKA, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**GURDEEP SINGH NAYER ..... PLAINTIFF**

**AND**

**KULTHUM SEIF MOHAMED ..... 1<sup>ST</sup> RESPONDENT**

**BAKEBITE INTERNATIONA LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application is dated 24<sup>th</sup> October 2023 and is brought under Sections 1A, 1B, 3, 3A 63 (e) of the *Civil Procedure Act* Order 22 Rule 46 of the *Civil Procedure Rules*, Cap 21 of Kenya seeking the following orders;
  - a. That this Application be certified as urgent and its dispensed within the first instance
  - b. That Nimag Auctioneers be allowed to sell by public private treaty in recovery of Rental income due and owing Applicant, storage charges, Advocates' fees, Auctioneers/ and other disbursements incidental thereto.
  - c. That the court do make any order or grant any relief it considers just and expedient in the interest of justice.
  - d. That the costs of the Application be provided for.
2. The application was based on the facts in the supporting affidavit of even date as the application sworn by the plaintiff which stated inter alia that after filing of the suit several attempts at serving the same were made on the defendants until this court was satisfied with the service; that thereafter on 30<sup>th</sup> June 2023 this court granted break in orders in respect of the plaintiff's premises known as Shop 1, 2 and 3 on Plot No. 209/4864/XVII/135/Section 1 Kengeleni Centre (hereafter known as the suit properties); that pursuant to the above orders, the plaintiff instructed Nimag Auctioneers vide a letter dated 5<sup>th</sup> July



2023 who proceeded to the suit properties and took inventory and prepared a comprehensive report of even date; that the respondent through Mogaka Omwenga wrote a letter dated 10<sup>th</sup> August 2023 claiming a fortune of Kshs 28,850,000 as the value of property ostensibly taken away after the break in orders issued by the court; that counsel on behalf of the plaintiff responded to the above vide a letter dated 8<sup>th</sup> September 2023 confirming that the goods were in their custody and that the actual value is Kshs 3,552,600; that the respondents did not make further responses inspite of incurring costs in storage, security and other charges; that the respondent are mischievous as can be observed in their conduct of not responding to service of court documents but only reacted after this court gave break in orders.

3. The defendants have never entered appearance but the plaintiff filed their submissions with respect to the application. The court has perused the application and submissions and has found the issues for determination are as follows:
  1. Whether the application has merit?
  2. Who bears the costs?
4. The relevant laws and/or procedure for this application are governed by the Auctioneers rules and more specifically from rule 11 to 17 where it is a public auction or private treaty. Even more relevant to this application are rule 12 and 16 of the *Auctioneer Rules* which has set out the procedure and the court need not give orders in respect of the prayers herein. For reference purposes the whole auctioning process was set out by the high court in *Maina Wanjigi & another v Bank of Africa Kenya Ltd & 2 others* (2015) eKLR where the sale was for land. This should be dealt with administratively and not by way of application. The application is therefore dismissed with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2024.**

**N.A. MATHEKA**

**JUDGE**

