



**Nyamu & 10 others v National Bank of Kenya Limited (Cause 1476, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474 & 1475 of 2015 & 1629 of 2016 (Consolidated)) [2022] KEELRC 13253 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13253 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 1476, 1467, 1468, 1469, 1470, 1471, 1472, 1473,  
1474 & 1475 OF 2015 & 1629 OF 2016 (CONSOLIDATED)**

**L NDOLO, J**

**NOVEMBER 17, 2022**

**BETWEEN**

**FRANCIS MP NYAMU ..... 1<sup>ST</sup> CLAIMANT**  
**MERCY WAIRIMU WAITHAKA ..... 2<sup>ND</sup> CLAIMANT**  
**JOSELINE MAREGU NYAGAH ..... 3<sup>RD</sup> CLAIMANT**  
**JOSIAH MWAURA NJOROGE ..... 4<sup>TH</sup> CLAIMANT**  
**PERIS WAIRIGU KIGUTA ..... 5<sup>TH</sup> CLAIMANT**  
**JOSEPH KIPROP BARTOCHO ..... 6<sup>TH</sup> CLAIMANT**  
**JACKSON J SOPHAS KHOLE ..... 7<sup>TH</sup> CLAIMANT**  
**BRETTA MWIKALI MWOLOLO ..... 8<sup>TH</sup> CLAIMANT**  
**JEDDAH KISIAVUKI LODENYI ..... 9<sup>TH</sup> CLAIMANT**  
**WILSON NYARANGA MIMA ..... 10<sup>TH</sup> CLAIMANT**  
**PETER MUSEMBI MUTHAMA ..... 11<sup>TH</sup> CLAIMANT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The subject of this ruling is a Notice of Motion dated July 4, 2022 by which the Respondent seeks the following orders:



- a. An order staying further execution of the judgment and resultant decree of Makau J delivered on January 24, 2020;
  - b. That the warrants of attachment dated June 17, 2022 and proclamation notice of June 20, 2022 be lifted and recalled on the basis that they are null and void *ab initio*;
  - c. That the Auctioneer be directed to file his bill of costs for assessment by the Registrar.
2. The Motion is supported by an affidavit sworn by the Respondent's Ag Head, Commercial Transactions and Litigation, Chrispus Maithya and is based on the following grounds:
- a. There is imminent threat of attachment by Icon Auctioneers, pursuant to warrants of attachment dated June 17, 2022 which warrants were extracted unprocedurally;
  - b. The entire decretal sum has been fully settled and there is now a dispute as to the Auctioneers' fees for the wrongful proclamation of June 20, 2022, by Icon Auctioneers;
  - c. The claim herein was a consolidation of eleven (11) suits commenced by the Claimants in 2015 and 2016 against the Bank, alleging unlawful and unfair termination of their employment by way of early retirement;
  - d. The Court (Makau J) delivered a judgment dated January 24, 2020 in favour of the Claimants in the following terms:
    - i. Francis MP Nyamu (1<sup>st</sup> Claimant) - Kshs 2,099,180
    - ii. Mercy Wairimu Waitheka (2<sup>nd</sup> Claimant) - Kshs 3,256,250
    - iii. Joseline Maregu Nyagah (3<sup>rd</sup> Claimant) – Kshs 2,238,550
    - iv. Josiah Mwaura Njoroge (4<sup>th</sup> Claimant) – Kshs 2,139,940
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- v. Peris Wairigu Kiguta (5<sup>th</sup> Claimant) – Kshs 3,475,060
  - vi. Joseph Kiprop Bartocho (6<sup>th</sup> Claimant) – Kshs 3,232,150
  - vii. Jackson J. Sophas Khole (7<sup>th</sup> Claimant – Kshs 2,907,460
  - viii. Bretta Mwikali Mwololo (8<sup>th</sup> Claimant) – Kshs 3,271,350
  - ix. Jeddah Kisiavuki Lodenyi (9<sup>th</sup> Claimant) – Kshs 2,035,260
  - x. Wilson Nyaranga Mima (10<sup>th</sup> Claimant) – Kshs. 3,476,160
  - xi. Peter Musembi Muthama (11<sup>th</sup> Claimant) – Kshs 2,819,640
- e. A decree in the above terms was extracted and issued by the Deputy Registrar on March 5, 2020;
  - f. The Bank, being dissatisfied with the said judgment filed a Notice of Appeal dated January 25, 2020, through the firm of Oraro & Company Advocates and contemporaneously applied for typed proceedings to enable them file a Record of Appeal;
  - g. The Bank also applied for a stay of execution by Notice of Motion dated March 5, 2020, which application was granted on condition that the entire decretal sum plus the taxed costs be deposited in a joint interest earning account;



- h. A joint interest earning account was opened in the names of the Claimants' and Bank's Advocates and the entire decretal sum less statutory deductions, being Kshs 22,393,996 was deposited, pursuant to the court order;
  - i. The Bank filed Civil Appeal No 137 of 2020 on March 20, 2020, which appeal was heard and dismissed on May 13, 2022;
  - j. The Claimants, instead of calling for the retirement of the joint interest earning account, proceeded to apply and extract warrants of attachment on June 17, 2022;
  - k. The said warrants of attachment were obtained irregularly as there was no notice to show cause served on the Bank as prescribed under Order 22 Rule 18 of the Civil Procedure Rules;
  - l. The said warrants of attachment were also erroneous to the extent of the figures and are therefore null and void *ab initio*;
  - m. That notwithstanding, the Claimants went ahead and instructed Icon Auctioneers to proclaim the Bank's moveable assets on June 20, 2022 for an incorrect decretal sum of Kshs 40,183,070;
  - n. The Auctioneer issued the Bank with an invoice of Kshs 3,700,000 based on the erroneous and incorrect sum, even though the Auctioneer's fees ought to be based on the value of the goods attached and not on the decretal sum; therefore, the invoice aforementioned is grossly exaggerated and irregular;
  - o. The Bank had already deposited the entire decretal sum in a joint account and intimated its willingness to settle the balance and therefore the proclamation was unnecessary;
  - p. The Bank's Advocates executed a letter to the Bank with the joint account for release of funds to the Claimant's Advocates on June 22, 2022;
  - q. The Bank has also remitted the balance of Kshs 8,375,448 to the Claimants' Advocates as per email of June 22, 2022 and therefore the entire decretal sum plus costs has been fully settled;
  - r. The Bank now disputes the Auctioneer's invoice and has asked them to file an itemised bill of costs for taxation but they have refused and have been harassing the Bank and misusing the coercive power of attachment.
3. The Claimants' response to the Motion is by way of a replying affidavit sworn by their Counsel, Harrison Githinji on September 20, 2022.
  4. Counsel depones that the Claimants' Advocates, Nyingi Wanjiru & Company Advocates instructed Icon Auctioneers to extract and execute the decree dated March 5, 2020.
  5. Upon receiving the instructions, the Auctioneers proceeded to apply and extract warrants of attachment on June 17, 2022 and soon thereafter, they went on to issue a proclamation notice to the Respondent.
  6. After issuing the proclamation notice, the Auctioneers invoiced the Respondent for fees amounting to Kshs 3,700,000.
  7. Counsel further depones that the Auctioneer visited the Respondent's premises for a second time, with the intention of attaching the Respondent's property.
  8. Counsel adds that when he was informed of the Auctioneer's second visit, he called him and expressly gave him instructions not to proceed with the attachment, because there were negotiations about payment of the decretal sum.



9. Counsel asserts that the Auctioneer, in disobedience of the Counsel's express instructions, went ahead to attach and claim that the invoiced fees of Kshs. 3,700,000 must be paid for the work done.
10. It is deponed that a dispute arose between the Respondent and the Auctioneer pertaining to the Auctioneer's fees.
11. Counsel accuses the Auctioneer of refusing to pursue the available resolution options and instead opting to get his own Counsel.
12. According to Counsel for the Claimants, there is no imminent threat of attachment as the matter has been settled save for the issue of Auctioneer's fees.
13. The Auctioneer filed a Bill of Costs dated September 1, 2022 by which he claims the total sum of Kshs 1,109,346.62. He however did not file any affidavit in response to the accusations made against him by both the Respondent and the Claimants' Counsel.
14. Specifically, the Claimants' Counsel, who had issued initial instructions to the Auctioneer, accuses the Auctioneer of failing to implement further instructions to halt the execution. This accusation has not been debunked and it emerges that the Auctioneer acted without instructions from the instructing client.
15. On the whole, I find and hold that this execution was unnecessary and since the Auctioneer failed to follow instructions by the instructing client, he will bear his own costs for the execution. In light of this finding, there is no value in considering the other prayers in the Notice of Motion.
16. Regarding the Notice of Motion, I direct that each party will bear their own costs.
17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF NOVEMBER 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Mbugua for the Claimants

Mr. Kiragu for the Respondent

Mr. Kamenju for the Auctioneer

