



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NO. 16 OF 2013

FREDRICK NGARI MUCHIRA

HOWARD KIPKOECH KORIR & 98 OTHERS.....CLAIMANTS

VERSUS

PYRETHRUM BOARD OF KENYA.....RESPONDENT

AND

GEOFFREY ISHUA KARIUKI T/A DIRECT "O" AUCTIONEERS....INTERESTED PARTY

RULING

1. This ruling emanates from the Court's directions issue via the Ruling of 6th May, 2021 to wit the auctioneers and the claimant do render full accounts of the all monies received from the Applicant/Respondent and from the motor vehicle registration number KAH 721F that had been attached and allegedly sold via public auction.
2. In response to the orders of the Court the auctioneer filed its statement of account on the 19th May, 2021 and a further statement on 29th July, 2021 stating that they were instructed by the claimants' advocates (Millimo Muthomi and Company Advocates) to execute warrants of attachment dated 9.4.2019, 1.7.2019 and 5.9.2019 against the Respondent.
3. It is stated that the 1st Warrants was issued on 9th April, 2019 for Kshs 7,750,027/= and the auctioneers fees had been agreed at Kshs 350,000/- which was paid and the decretal sum was not paid.
4. That the Warrants of sale was re-issued on 2nd July, 2019 of Kshs. 7,750,792/= which caused motor vehicle KAH 721F to be attached on the same day and a valuation carried out on 16th July, 2019 which vehicle was valued at Kshs 450,000/- , advertised for sale on 9th July, 2019 and later sold by public auction for Kshs. 500,000/- on the 17th July, 2019.
5. That from the said Monies received in the public auction, Kshs, 279,800/- went towards their proclamation fees and Kshs. 169,031 was for the attachment and auctioneers' fees while Kshs. 66,540 was for storage fees depleting the said monies leaving a balance of Kshs 15,392/- which remained unpaid.
6. He stated that the 3rd Warrants was issued on the 5th September, 2019 for Kshs. 4,274,017/-, which the Respondent promised to clear the same together with their auctioneers' fees of Kshs. 196,689/- through the claimants' advocates which fees remained unpaid to date.
7. He thus alleged that the Respondent owes them a total of Kshs. 212,081 being the fees not paid for execution of the 3rd Warrants and the balance of fees for levying execution for the warrants of 2nd July, 2019.
8. The Claimants on the other hand filed a replying affidavit deposed upon on the 25th June, 2021 by Howard Kipkoech Korir, one of the claimants and filed in Court on 28th June, 2021 and a further affidavit deposed upon on the 9th July, 2021 by S.J Saenyi, their advocate on record and filed in Court on 13th July, 2021.
9. Mr. Howard Kipkoech on behalf of all other claimants stated that when the ruling of this Court (Justice Radido) was delivered on 1st December, 2017, a joint accounts report was prepared, filed and eventually adopted by the Court on the 7th March, 2019 which indicated the

outstanding decretal sum to be of Kshs. 7,392,967/-. Further that the court ordered the accountant's fees to be shared between the claimants and the Respondent, however the Respondent refused to pay its share and the Claimants were forced to pay the entire sum of Kshs. 356,300/-.

10. That the Court ordered the Respondent to refund the claimants the accountant's fees he ought to have paid of Kshs. 178,150/-. Therefore, the total sum due to the Claimant was the decretal sum of Kshs. 7,392,967 plus refund of the accountant's fees of Kshs. 178,150 all adding up to Kshs. 7,571,117/- which the Respondent paid Kshs. 3,476,491/- on the 25.7.2019 and another Kshs. 4,274,017/ on the 16.10.2019 and the Claimant remained in excess of Kshs. 179,090.

11. That post judgment, there were costs that were awarded to the claimant and any monies held by the claimant being Kshs. 179,090 stated above will be used as lien for the claimants' costs which will be calculated.

12. The claimants advocate reiterated all the contents of Mr. Howard Kipkoech affidavit and maintained that any monies they are holding will be used as lien to offset the cost the claimant will be owed in future bill of costs.

13. The Respondent, filed an affidavit on the 9th July, 2021 deposed upon by Mary Mora Ontiri, its acting chief executive officer on the 8th July, 2021, in which she stated that the Respondent's motor vehicle registration number KAH 721F was attached sometimes in April, 2019 for the purpose of satisfying this Court decree of Kshs. 7,750,017.

14. That they paid a sum of Kshs. 3,476,491/- on the 25th July, 2019 leaving a balance of Kshs. 4,274,017 which was paid on the 16th October, 2019 in full satisfaction of the decree.

15. That the sum of Kshs. 196,689/- paid by the Respondent to the Claimants' advocates was for the satisfaction of the auctioneers' fee note raised on 10th September, 2019.

16. That the auctioneers fee note raised on 9th April, 2019 of Kshs 236,880/- was renegotiated to Kshs. 200,000/- and the fee note of 18th May, 2019 of Kshs. 169,032/- was negotiated to Kshs 150,000/- which were all paid on 30th May, 2019 as evidence by the auctioneers Annexure GIK-2 settling the auctioneers fee notes of April and May.

17. She stated that the auctioneers is less candid when he stated in his statement that the motor vehicle was proclaimed on 2nd July, 2019 pursuant to the 2nd warrants of sale issued on the same date when it's annexure GIK-4 indicates that the attachment was carried out on the 18th May, 2019 pursuant to warrant issued by the Court on 9th April, 2019.

18. That the alleged proclamation fees of Kshs. 279,800 was not owing as the proclamation was done on 9th April, 2019 and a fee note raised which was duly paid. Further that no fee note of Kshs. 279,800/- was ever raised by the auctioneers therefore it was impossible for the Respondent to pay for it. That the only fee note raised in May was one made on 18th May, 2019 of Kshs. 169,032 that was negotiated to Kshs. 150,000/- and paid on 30th May, 2019 as affirmed by the auctioneers' statement filed herein.

19. That the fee note of the alleged storage fees was never raised to the Respondent and the Respondent is unaware of such fees. Further that its curious that the auctioneers alleged fees is Kshs. 515,392/- over and above the value of the vehicle which was valued at Kshs. 450,000/-.

20. The Respondent contends that the sale was not legitimate as no evidence in form of advertising is tabled before this Court. further that the proceeds from the said sale was never factored in the decretal sum when the 2nd warrant of attachment was issued raising questions on the said sale.

21. That the last fee note raised by the auctioneers was done on 5th September, 2019 of Kshs 196,689/- which monies were forwarded to the Claimants Advocates for onward transmission to the auctioneers a fact that was agreed upon by the parties.

22. The Respondent urged this Court to declare the sale of the motor vehicle illegal and the auctioneers together with the claimants be ordered to pay the Respondent damages for the illegal sale of the motor vehicle.

23. The Court on 13th July, 2021 directed parties to file submissions if need be and only the Respondent filed submissions on the 26th July, 2021 and submitted that it is illegal for the Claimants' Advocate to hold in lien the auctioneers fees for payment of costs that would accrue post judgment when the said sums of monies had not been taxed as required by law.

24. It was also submitted that the sale of the Respondent's motor vehicle was illegal in that the motor vehicle was attached in 18th May, 2019 and the warrants were allegedly issue on 2nd July, 2021. Also that the vehicle was valued at Kshs. 450,000/- and the auctioneers purported fees was at Kshs. 515,392 over and above the proceeds of the alleged auction.

25. The Respondent wants this Court to nullify the sale of the said vehicle and the Claimants together with the auctioneers be compelled to pay for the value of that vehicle.

26. I have examined the averments of the parties herein. The contention before this court emanates from my ruling dated 6th May, 2021 where the applicant respondent herein sought orders that the auctioneers M/s Direct "O" Auctioneers be compelled to forthwith return motor vehicle KAH 721F Toyota Hilux Pickup to the respondents Pyrethrum Board of Kenya herein.

27. They also sought an order of this court to compel the auctioneers to render a full account following their alleged sale of motor vehicle Reg. No. KAH 721F. In the alternative they wanted the auctioneer to pay the respondent the substantive current market value of the said vehicle.

28. Upon hearing the said application I rendered a ruling ordering the auctioneers to render a full account of all moneys received from the respondent and the motor vehicle attached.

29. In rendering their accounts, the auctioneers have submitted that they were issued with 1st warrant of attachment on 9/4/2019 from kshs. 1,150,017 and auctioneers fees was agreed at 350,000/=.

30. The claimant has agreed on this save that the court had ordered the auctioneer's fees to be shared between the claimants and respondents but the respondents refused to pay their share. The claimants were forced to pay the entire sum of 356,300/=.

31. The respondents on their part indicated that the motor vehicle KAH 721F was attached in April 2019 for the purpose of satisfying the decree of kshs.7,750,017/=.

32. They aver that they paid 3,476,491/= on 25/7/2019 and the balance of 427,017/= was paid on 16th October, 2019 in full satisfaction of the decree.

33. They aver that auctioneer's fee note of 9th April 2019 of kshs.230,880/= was negotiated to 200,000/= and a fee note of 1st May 2019 of kshs.169,032 was renegotiated and paid on 30th May, 2019 as per exhibit GIK 2 submitted by the auctioneer.

34. Exh. GIK 2 however as seen by court is a warrant of sale issued on 9th April 2019 and there is no indication that the auctioneers fees was paid as averred by the respondent.

35. I have also noted that there was a further evidence that warrants of attachment were reissued on 2/9/2019 for 7,750,792/= for the balance of the decree and costs still remaining unsatisfied. This is as per annexure GIK 5 and as per annexure GIK 7.

36. Given that the warrants were reissued, it therefore follows that a proclamation had to follow contrary to what the respondents have submitted.

37. As relates to a new proclamation fee of 279,800/= however, no fee note was raised by the auctioneer following the issuance of warrants of 2/7/2019. No proclamation is also attached to show there was any such proclamation following these warrants.

38. The submissions by the respondent that there was no new proclamation in July 2019 is true. The proclamation attached to annexure GIK 4 is actually the one carried out on 18th May 2019 pursuant to warrants issued by court on 9/4/2019.

39. The auctioneer is therefore not entitled to 279,800/= alleged proclamation fee following warrants issued on 2/7/2019.

40. As concerns fees for storage, the auctioneer have not produced any fee note to warrant their demand for the same.

41. As submitted by the respondent, I agree that it is rather perplexing that the auctioneers are demanding 515,392/= as their fees when the value of the vehicle was 450,000/= and they aver they sold it at 500,000/=.

42. There is also no evidence of ordering for sale of this motor vehicle KAH 721F. The auctioneer have only submitted a certificate of sale – Exh. GIK 8 without any evidence that this motor vehicle was advertised for sale and without explaining how and where the sale took place.

43. From the submission of the respondent, the entire decretal sum was paid. The auctioneer could only sell the respondent's motor vehicle to recover their costs if at all after their costs were taxed. This was never done. No fee note was raised. It is therefore my finding that the alleged sale of motor vehicle KAH 721F is not supported by any evidence in form of advertising.

44. The sale if done was illegally and the auctioneer is not entitled to recovery of his fees from an illegal sale without taxation of his costs.

45. I declare this sale illegal and I order the auctioneer to pay back to the respondents the value of the motor vehicle being 500,000/= (as valued).

RULING DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Saenyi for Claimant – present

Kabalika for Respondent – present

Court Assistant - Fred