



REPUBLIC OF KENYA



**Chege & another v Ngari (Civil Appeal E349 of 2023)
[2025] KEHC 3877 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3877 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E349 OF 2023

SN MUTUKU, J

MARCH 27, 2025

BETWEEN

GRACE WANJIRU CHEGE 1ST APPELLANT

JAMES KAMAU NJENGA 2ND APPELLANT

AND

PETER MUNGAI NGARI RESPONDENT

RULING

The Application

1. This ruling relates to the Notice of Motion dated 15.01.2025 (the Motion) brought by Grace Wanjiru Chege and James Kamau Njenga (hereafter the 1st and 2nd Applicants). The Motion is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA); Order 21, Rule 12(2), Order 22, Rule 22, Order 42, Rules 4, 6 and 7, and Order 50, Rule 1 of the Civil Procedure Rules (CPR); and Article 159(2) (a) and (d) of *the Constitution* of Kenya, 2010.
2. The Motion is supported by the grounds set out on its body and in the Supporting Affidavit of the Applicants' advocate, Janerose Nanjira, sworn on 15th January 2025. The Motion seeks the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.



- iv. That this Honourable Court be pleased to deem and order that further execution by Icon Auctioneers against the Applicants are irregular, unprocedural, null and void by dint of having been conducted after the full decretal amount has been paid.
 - v. That this Honourable Court be pleased to grant an order for the unconditional discharge and/or release of the detained/attached property being motor vehicle registration number KBU 927J by the Respondent and his agents and at the respondent's expense pending the hearing and determination of this Application.
 - vi. That this Honourable Court be pleased to grant and/or issue an Order of Police assistance directing Officer Commanding Station Central Police Station-Nairobi to ensure compliance with the court orders issued by this Honourable Court.
 - vii. That this Honourable Court be pleased to order that all the attendant costs of the irregular, unprocedural and unlawful detention and the consequential loss incurred by the Applicants for the loss of use of its property, operations and business be paid by the Respondent and his agents.
 - viii. That this Honourable Court be pleased to issue any other order and/or direction it deems fit to grant in the interest of justice and in the circumstances.
 - ix. That Icon Auctioneers be directed to tax their costs.
 - x. That costs of the Application be provided for.
3. In her supporting affidavit, the Applicants' advocate stated that being aggrieved by the judgment delivered in the suit wherein the trial court awarded a sum of Kshs. 1,848,332/- to the Respondent, the Applicants filed the present appeal to challenge the said award; that upon lodging the appeal, the Applicants filed an application seeking an order for a stay of execution pending appeal, which order was granted on the condition that the Applicants do deposit the sum of Kshs. 700,000/- as security, in court; that the above sum was deposited and subsequently released to Peter Mungai Ngari (hereafter the Respondent) and that nevertheless, the Respondent commenced execution proceedings vide a notice of proclamation and warrants dated 11.11.2024 claiming a balance of Kshs. 802,681/- which was subsequently settled in full by the Applicants on 10.01.2025.
 4. It is further asserted that the Applicants' attempts at settling the Auctioneers' fees to enable the release of the Applicants' motor vehicle registration number KBU 972J Isuzu Bus Coach (the subject motor vehicle) have proved futile; that the Applicants therefore stand to suffer irreparable loss and damage if the orders sought in the instant Motion are denied, since no material has been tendered to prove that the subject motor vehicle has been sold and that in the circumstances, the Applicants are entitled to the unconditional release of the subject motor vehicle which is being unlawfully detained, as well as an order directing Icon Auctioneers (the Auctioneers) to tax their costs.

Reply and Supplementary Affidavits

5. The Respondent has sworn a replying affidavit on 14.02.2025 to oppose the Motion. He has deposed that pursuant to his instructions for execution of the decree issued in the suit, the Auctioneers proclaimed the subject motor vehicle and advertised it for sale vide the Standard Newspaper dated 30.11.2024. That subsequently, the said motor vehicle was sold by way of a public auction which was held on 7.12.2024 upon the Applicants' failure to settle the outstanding decretal sum. On the premise of those assertions, the Respondent deposed that the Motion has been overtaken by events and is therefore an exercise in futility.



6. The 1st Applicant has rejoined with a supplementary affidavit sworn on 17.02.2025, in which she has averred that she was served with the proclamation and warrants of attachment on 29.11.2024 being a day before the purported advertisement and sale of the subject motor vehicle. That, nevertheless, her insurer proceeded to remit the balance on the decretal sum Kshs. 802,581/- to the Respondent, on 10.01.2025. The 1st Applicant averred that she was never served with a notification of sale preceding the sale of the subject motor vehicle, adding that even after the purported sale thereof on 7.12.2024 the subject motor vehicle was subsequently advertised on the social media platform known as TIKTOK on 30.12.2024 through a handle name @james.maxwell.kib purporting that the said motor vehicle constituted a bank repossessed vehicle.
7. The 1st Applicant deposed that thereafter, she received text messages from the National Transport and Safety Authority (NTSA) on 30.01.2025, informing her that the subject motor vehicle was operating with an expired motor vehicle inspection report sticker, followed by a separate text message on 12.01.2025 informing her that an application for alternative transfer had been initiated in respect of the subject motor vehicle, in the absence of any vesting order.
8. It is her assertion that the Respondent has not tendered any valuation report to support the purported sale of the subject motor vehicle at a sum of Kshs. 800,000/-.
9. The Respondent similarly swore a supplementary affidavit on 18.02.2025 in rejoinder, stating inter alia, that this court lacks jurisdiction to entertain the instant Motion by dint of Section 34 of the CPA and that the orders sought therein cannot be granted in the absence of the Auctioneers and the purchaser of the subject motor vehicle. The Respondent reiterated his earlier averment that the Motion has already been overtaken by events.

Oral Submissions

10. The Motion was argued by way of oral submissions. Ms. Nanjira, counsel for Applicants, submitted that the sale in question was both unprocedural and illegal, primarily because the Applicants were not served with the requisite notices preceding the purported sale of the subject motor vehicle and that the advertisement of sale was issued to the said Applicants late, on 30.11.2024. That as at the time of sale thereof, the security sum earlier deposited had already been released to the Respondent, with the Applicants subsequently settling the remaining balance on the decretal amount on 10.01.2025.
11. Counsel, further, contended that no valuation report had been tendered by the Respondent to ascertain the true value of the subject motor vehicle or to support the sale thereof at a consideration of Kshs. 800,000/-. She further reiterated the averment made earlier in the 1st Applicant's supplementary affidavit, that the Applicant recently received an alert from NTSA indicating that the subject motor vehicle was being operated without a valid motor vehicle inspection sticker. That owing to the failure on the part of the Respondent in complying with the proper procedure in notifying the Applicant of the imminent sale of the subject motor vehicle, this court ought to deem the entire sale unlawful and to make an order for release of the said motor vehicle to the Applicants, with the assistance of the police as requested in the Motion.
12. Counsel urged the court to consider the case of Hughes Limited v Mohammed S Kassam [2008] KEHC 469 (KLR) in finding that the sale of the subject motor vehicle was illegal and unlawful for want of service of the notification of sale upon the Applicants, and to therefore grant the orders being sought in the Motion.
13. Mr. Waithaka, counsel for the Respondent, opposed the application. He submitted that the High Court in making its determination in the matter was acting as an appellate court, the dispute having



originally been determined by the lower court. That in the circumstances, this court ought to decline the Motion, pursuant to Section 34 of the CPA which provides that all disputes relating to the execution, satisfaction and/or discharge of decrees ought to be determined by the court which executed the decree in question, in this instance, the lower court.

14. Counsel submitted that the notification and sale process in respect of the subject motor vehicle is lawful, and that as at the time the Applicants settled the remaining balance on the decretal sum, the Respondent had already commenced and concluded the execution process. He further argued that in any event, neither the Auctioneers nor the purchaser of the sale transaction have been joined in these proceedings.
15. It is counsel's submission that the Applicants have not tendered any material to ascertain the authenticity of the Tik Tok advertisements availed in support of the Motion. Counsel submitted that the purchaser in this instance was at liberty to buy the subject motor vehicle and urged this court to find that the Motion has been overtaken by events.
16. In a rejoinder, Ms. Nanjira contended that this court has jurisdiction to entertain the Motion contrary to the submission by the Respondent's advocate. She also reiterated her earlier submissions that her clients never received proper and adequate notification or proof of the purported sale and hence they had no way of enjoining parties who were unknown to them, in the present proceedings.

Analysis and Determination

17. The court has considered the grounds laid out on the body of the Motion; the grounds in the affidavits supporting and opposing the Motion; and the rival oral submission by the respective counsel.
18. To put this matter into perspective, this court will briefly set out the events leading to the instant Motion. The Respondent herein initially filed Milimani CMCC No. E8790 of 2021 (the suit) against the Applicants, seeking general and special damages arising out of a claim for negligence and in respect of injuries sustained in a road traffic accident. The 1st Applicant entered appearance and filed her statement of defence denying the claim; however, upon the failure of the 2nd Applicant to enter appearance and/or file his statement of defence, an interlocutory judgment was entered against him. The matter thereafter proceeded for hearing and upon conclusion of the trial, the trial court, vide the judgment delivered on 25.04.2023, found in favour of the Respondent and against the Applicants jointly and severally, thus awarding the Respondent general damages in the sum of Kshs. 1,000,000/-; damages for loss of earning capacity/future earnings in the sum of Kshs. 800,000/-; and special damages to the tune of Kshs. 48,332/- thereby constituting an aggregate award of Kshs. 1,848,332/-.
19. The Applicants were dissatisfied with the respective awards made. They sought to challenge the same by way of the present appeal, vide the Memorandum of Appeal dated 29.04.2023. The court record shows that the Applicants soon thereafter filed an application dated 11.05.2023 seeking, inter alia, an interim order for a stay of execution of the impugned judgment and an order allowing the Applicants to provide security by way of a bank guarantee.
20. The matter was placed before this court (Meoli, J.) on 12.05.2023 under certificate of urgency. An order for temporary stay was granted on the condition that the Applicants deposit the sum of Kshs. 700,000/- in court by close of business on 14.06.2023. The record further shows that the Applicants complied with the above condition on 6.06.2023. It is apparent from the record that when the application later came up in court for inter partes hearing on 26.06.2023, the parties consented to having the application compromised on the condition that the monies earlier deposited in court be retained as security, pending hearing and determination of the appeal.



21. The appeal was dispensed through the filing of written submissions, as shown in the court file. By a judgment delivered on 30.05.2024, the Court, (Ong'undi, J), allowed the appeal only to the extent of the award made on damages for loss of earning capacity, which the learned Judge revised downwards to a sum of Kshs. 300,000/- bringing the total award to Kshs. 1,348,332/-. The Respondent was equally awarded ½ of the costs of both the suit and the appeal.
22. The record shows that the Respondent thereafter proceeded to file a Party and Party Bill of Costs dated 18.06.2024 seeking a sum of Kshs. 330,894.72 which was opposed by the Applicants. However, before the Bill of Costs could proceed for taxation, the Applicants moved the court by way of the instant Motion.
23. To my mind, the Respondent has sought to challenge the competency of the instant Motion before this court, by invoking Section 34 of the CPA which provides thus:
 - (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
 - (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees....
24. From the sequence of events set out above, it has been established that while the suit was originally heard and determined by the lower court, the same later filed to this Court on appeal, and a decision was rendered. It is apparent from the record that subsequently, the Respondent proceeded to execute the decree emanating from the High Court judgment on appeal, before the lower court, resulting in issuance of the relevant warrants of attachment by the lower court.
25. Suffice it to say that, from a reading and interpretation of the above-cited Section 34 (supra), the court is of the view that the same does not necessarily bar the Applicants from moving this court on the issue of execution, given the fact that the decree being executed derives from the High Court judgment. Moreover, Article 165(6) of *the Constitution* gives the High Court supervisory jurisdiction over subordinate courts, in any event. In view of the foregoing circumstances, this court is satisfied that the instant Motion is competently before it.
26. Returning to the Motion before this Court, it is noted that the application seeks various orders, most of which were dealt with in the interim stage and are therefore spent. The key substantive order sought, therefore, is prayer 4, seeking to deem any further execution carried out by the Auctioneers against the Applicants to be irregular, unprocedural, illegal, null and void, on the premise that the Applicants have since settled the decretal sum in full. That resultantly, any attendant costs or consequential loss arising therefrom should be borne by the Respondent and/or his agents. The Applicants are likewise seeking an order for police assistance in effecting the court orders to be issued, any other order this court may deem just to grant and costs of the application.
27. However, it has been established that the subject motor vehicle had already been sold at the time of filing the Motion; it therefore follows that the latter order cited hereinabove has been overtaken by events since the same rides on the release of the subject motor vehicle to the Applicants.
28. To my understanding, the gist of the Motion after most of the orders sought have been overtaken by events, has to do with whether the execution process undertaken by way of sale of the subject motor vehicle was lawful and regular.



29. The Applicants' contention on the one hand is that the sale is irregular and unprocedural, in the absence of service of the requisite notification of sale upon them. The Respondent on the other hand maintains that the sale was lawfully and regularly conducted.
30. Upon perusal of the record, it is apparent that following delivery of the judgment on appeal on 30.04.2024, the Court issued an order for release of the security sum of Kshs. 700,000/- earlier deposited, to the Respondent. The record shows that subsequently, the Respondent moved the lower court for issuance of warrants of attachment of moveable property in respect of the remaining balance on the decretal sum, being Kshs. 802,681.92. The relevant warrants were consequently issued by the lower court on 11.11.2024 copies of which have been availed by the respective parties before this court.
31. The record shows that thereafter, the Auctioneers issued a Proclamation of Attachment of Moveable Property under Sale Form 2 and dated 11.11.2024, pursuant to Rule 12(1) (b) of the Auctioneers Rules No. 120 of 1997 (the Rules) and effected service of the same upon the 1st Applicant, who by way of her supplementary affidavit, confirmed receipt thereof, alleging that the same was served upon her on 29.11.2024. The Proclamation contained the particulars of the subject motor vehicle and placed its estimated value at Kshs. 950,000/-. In addition, the Proclamation notified the 1st Applicant that upon lapse of 7/14 days thereof, the subject motor vehicle would be taken into the Auctioneers' custody and sold by way of a public auction, unless the remaining balance on the decretal sum was settled before then.
32. From the perusal of the record, the court observes that no material has been placed before it to indicate issuance or service of a notification of sale by the Auctioneers thereafter, under Rule 12(1) (c) of the Rules, which stipulates that:
- (1) Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—
...
 - (c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction
33. Be that as it may, from a study of the contents of the Proclamation of Attachment referenced hereinabove, the court is of the view that the same constituted sufficient notice to the 1st Applicant, even in the absence of subsequent service of a notification of sale. Furthermore, it is apparent that upon being served with the Proclamation, the 1st Applicant forwarded a copy of an Attachment Reporting Form dated 2.12.2024 to her insurer confirming the proclamation and attachment of the subject motor vehicle.
34. That said, from the court's reading of the record, it is apparent that the Auctioneers in the present matter proceeded to place an advertisement in the Standard Newspaper dated 30.11.2024 giving notice to the public of the intended sale of the subject motor vehicle by way of public auction. The public auction subsequently took place on 7.12.2024 at Rajema Storage Yard, with the subject motor vehicle being sold at a sum of Kshs. 800,000/- to the highest bidder, one Stephen Galchibo Rable, an innocent purchaser for value. Upon deducting their fees, the Auctioneers remitted a balance of Kshs. 580,420/- to the Respondent through his advocates. The Respondent annexed copies of the newspaper advertisement, memorandum of sale, certificate of sale and relevant correspondence to that effect, to his replying affidavit.



35. From the sequence of events set out hereinabove, it is apparent that notwithstanding the absence of anything to indicate service of the notification of sale, the court is satisfied that the Proclamation of Attachment which was served upon the 1st Applicant nevertheless constituted sufficient notice of the intended attachment and sale of the subject motor vehicle, thereby giving her a reasonable opportunity to settle the outstanding decretal sum or to seek judicial recourse in any event. It is noted that despite receipt thereof, the 1st Applicant did not act on the Proclamation by taking the necessary active steps at redeeming the said motor vehicle within the timelines set, prior to the sale process. It has not been adequately demonstrated why the Applicants, whether by themselves or through their insurers, had to wait until 10.01.2025 to settle the remaining decretal balance.
36. The 1st Applicant cannot equally be heard to state that she only came to learn of the imminent sale and transfer of the subject motor vehicle through the purported Tik Tok photos sent to her and upon receipt of the text messages from NTSA, respectively. In any event, there is no way of ascertaining the veracity of the purported advertisement photos; while the NTSA text messages availed are undated. The court finds the above averments by the 1st Applicant not persuasive.
37. Further, on the subject of the proclamation and/or notification of sale, upon the court's study of the case of Hughes Limited v Mohammed S Kassam [2008] KEHC 469 (KLR), cited in the oral submissions by the Applicants' counsel, it noted that contrary to the averments by counsel that the court in the above-cited case deemed the sale of the relevant motor vehicle illegal and unlawful for want of service of the notification of sale, the court in that case actually declared the proclamation of attachment fatally defective for failure by the auctioneer to itemize the goods attached in a proper and specific manner. Consequently, the circumstances in the above case are distinguishable from the present matter.
38. In view of all the foregoing circumstances, it is clear that at the time the Applicants purported to settle the balance on the decretal sum or to move this court by way of the instant Motion, the subject motor vehicle had already been sold, and the Auctioneers had recovered their relevant costs. The court is of the view that no credible material has been provided to the Court to support the Applicants' averment that the sale in question is illegal and unlawful. In the premises, the court finds that the substance of the Motion has been overtaken by events.
39. However, upon consideration of the fact that the Applicants' insurer (Directline Assurance Company Limited) recently remitted the remaining balance of Kshs. 802,581/- to the Respondent's advocates, the court finds that in view of the prior sale of the subject motor vehicle, the Applicants and/or their insurer would at best be entitled to a refund of the sum of Kshs. 580,420/- (being the sum originally remitted to the Respondent's advocates upon the sale of the subject motor vehicle, less the Auctioneers' fees and related costs).
40. Accordingly, the Notice of Motion dated 15.01.2025 is hereby dismissed with costs to the Respondent. However, an order be and is hereby issued that the Respondent's advocates (the firm of Waithaka & Partners Advocates) do remit the sum of Kshs. 580,420/- to the Applicants' insurer (Directline Assurance Company Limited) within 30 days of this day.
41. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED 27TH MARCH 2025.

S. N. MUTUKU

JUDGE

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