



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mburu & another v Kengere & 3 others (Civil Appeal
E008 of 2025) [2025] KEHC 7531 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E008 OF 2025
FN MUCHEMI, J
MAY 29, 2025**

BETWEEN

FRANCIS KINYANJUI MBURU 1ST APPELLANT

JOHN MBURU NJUGUA 2ND APPELLANT

AND

HERMAN ANGWENYI KENGERE 1ST RESPONDENT

JEREMIAH MUCHENDU T/A ICON AUCTIONEERS 2ND RESPONDENT

JANE MUNIU T/A ICON AUCTIONEERS 3RD RESPONDENT

MOTOR SCOPE AUTO GARAGE 4TH RESPONDENT

RULING

1. This matter came for mention on 28/04/2025 to confirm compliance on the Motion dated 27/01/2025. The court during the previous mention date had directed that an Amended Motion be filed and that responses and submissions be filed by the respondents within timelines given thereto.
2. During the mention on 28th April 2025, Mr Makumi for the applicant in the Amended Motion (Amended on 27/01/2025) said he had filed herein a ruling on bill of costs in HC Misc. Application E 008 of 2025 dated 24/03/2025 by the Deputy Registrar (DR) between the parties herein. The ruling was to the effect that the auctioneer who had attached the applicant's vehicle in execution of the decree was not entitled to costs. He added that the said vehicle was to be released but the respondents had remained adamant regarding such release.
3. The 1st respondent's counsel Mr. Nganga opposed the application on grounds that it was unprocedural to introduce the ruling of the Deputy Registrar in the pending application before this court through a further affidavit as well as a letter at a late stage whereas the respondents had already filed their response to the Amended Motion as well as submissions.



4. Mr. Mutugi for 2nd respondent supported the objection and added that the application dismissed by the Deputy Registrar was due to want of jurisdiction and not for want of merit.
5. Mr. Makumi asked the court to rule on this issue before giving a ruling date on the Amended Motion dated 27/01/2025.
6. I have considered the issues raised by Mr. Makumi for the applicant and the responses by the respondents' counsels. It is not in dispute that pleadings in this Amended Motion have closed in that parties have already filed submissions.
7. I am in agreement with the respondents that it is unprocedural to introduce new evidence in the said application. If the new evidence is allowed, this would mean that the respondents would require to respond to the new issues and ought be given time to file responses. In my view, if the parties were to file further responses and submissions on the issue of the new evidence, this would cause delay in this application. Should the court find the ruling in the Misc. application before the Deputy Registrar relevant, it would call for the record which is this court' record of the Deputy Registrar who works under this court and refer to the ruling. As far as this court is concerned, the Deputy Registrar in his capacity as a taxing officer is part and parcel of this court.
8. As such, I find that it is not in the interests of justice for the parties to open the pleadings in the Amended Motion.
9. The court will proceed to give a ruling date on the Amended Motion.
10. It is hereby so directed.

RULING DELIVERD VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29TH DAY OF MAY 2025.

F. MUCHEMI

JUDGE

