



**Third Engineering Bureau of Chi City Construction Company Ltd v
Patrick Omare Barongo t/a Bama Auctioneers (Miscellaneous Civil Cause
E017 of 2024) [2024] KEHC 7725 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL CAUSE E017 OF 2024**

KW KIARIE, J

JUNE 26, 2024

BETWEEN

**THIRD ENGINEERING BUREAU OF CHINA CITY CONSTRUCTION
COMPANY LTD APPLICANT**

AND

PATRICK OMARE BARONGO T/A BAMA AUCTIONEERS RESPONDENT

JUDGMENT

1. Third Engineering Bureau of China City Construction Company Ltd, the applicant, moved the court through Chamber Summons dated the 19th of March 2024. It was brought under sections 1A, 1B, and 3A of the *Civil Procedure Act*, Rule 55 of the *Auctioneers Rules* and Articles 49 and 159 of the *Constitution* of Kenya. The applicant is seeking the following orders:
 - a. That this honorable court be pleased to certify this application as urgent due to the significant financial implications, which if not addressed promptly, could lead to substantial loss. Service be dispensed with at the first instance.
 - b. That this honourable court be urgently pleased to grant an order of stay of execution of the ruling delivered by the honourable Bernard Obae Omwansa on 13th March 2024, pending the interparty hearing and determination of this application, to prevent potential and irreparable financial loss to the applicant.
 - c. That this honourable court be pleased to grant an order of stay execution of the ruling delivered by the honourable Bernard Obae Omwansa on 13th marc 2024, pending hearing and determination of this appeal.
 - d. That this honourable court be urgently pleased to set aside the orders of Honorable Bernard Obae Omwansa on 13th March 2024 in Oyugis Misc. Civil Suit NO. E068 of 2023, Patrick



Omare Barongo T/a Bama Auctioneers v Third Engineering Bureau of China Construction Co. Ltd delivered on 13th March 2024 and order for the re-assessment of the Auctioneers Bill of Costs by a different taxing master, to ensure a critically essential and fair and unbiased reassessment.

- e. That in the alternative this honorable court be pleased to set aside the orders of Honorable Bernard Obae Omwansa on 13th March 2024 in Oyugis Misc. Civil Suit No. E068 of 2023, Patrick Omare Barongo T/a Bama Auctioneers v Third Engineering Bureau of China delivered on 13th March, 2024 and same be substituted by an order of this court re-assessing the bill afresh. The current costs are believed to be significantly inflated, and a fair reassessment is crucial to ensure justice is served.
 - f. That the costs of this application be in the cause.
2. The application was premised on the following grounds:
- a. That the application herein emanates from a certificate of costs passed by Honorable Bernard Obae Omwansa on 13th March 2024 in Oyugis Misc. Civil Suit No. E068 of 2023, Patrick Omare Barongo T/a Bama Auctioneers v Third Engineering Bureau of China ordered the Auctioneer to be paid kshs.115,000/-.
 - b. It is contended that the taxing master failed to appreciate that the Auctioneer only served the warrants of attachment and proclamation notice. Still, he did not proclaim since the applicant had already paid kshs.200,000/- for which the auctioneer claimed costs.
 - c. That by taxing the said bill of costs, the taxing master proceeded on the wrong principle in exercising his discretion to tax the auctioneer's bill of costs.
 - d. That there is an error apparent on the face of the record in that the Bill of costs herein was taxed without due regard to Rule 55(1) of the Auctioneers Rules; the fees payable to an auctioneer are those provided for or calculated in the mode set in the Fourth Schedule.
 - e. That the taxing master misapplied principles of Law in the taxation of the bill of costs.
 - f. The taxing master failed to consider that the Auctioneer could not approve the costs incurred to support the items as strictly proved as per the provisions of the remuneration order.
 - g. That the taxing master did not consider the applicant/appellant's written submissions, which were filed before the impugned ruling; that the taxing master restricted himself to taxing the Bill of Costs only and ignored the other issues raised in the Notice of Motion.
 - h. That the award is too excessive that the certificate of costs is grossly exaggerated and not reflective of the value of work done by the Auctioneers, which is punitive and not compensatory.
 - i. Even upon request, the taxing officer has not availed a ruling and/or reasoning to shed light on how the sum of kshs.115,915/- was arrived at.
 - j. The taxing master never gave reasons for the decision to grant the application, yet in the law relating to taxation, the segments of the bill of costs as pleaded must be assessed by the taxing master. The bill of costs is never read and granted without giving the reason for each item upon reliance on the Auctioneers Act and Rules.
 - k. The costs should be limited to proper remuneration for work done and not be awarded to give rise to unjust enrichment.



3. The respondent was served but did not file a response. Therefore, the application was unopposed.
4. I allow the application and order that the bill of costs be assessed afresh by another judicial officer other than Hon. Bernard Obae Omwansa. Costs are in the cause.

DELIVERED AND SIGNED AT HOMA BAY THIS 26TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

