



Impact Finance Sacco v Barasa; Lutta t/a Lufree Auctioneers (Respondent) (Civil Appeal E031 of 2021) [2024] KEHC 15887 (KLR) (31 October 2024) (Judgment)

Neutral citation: [2024] KEHC 15887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E031 OF 2021
REA OUGO, J
OCTOBER 31, 2024**

BETWEEN

IMPACT FINANCE SACCO APPELLANT

AND

AMOS WEKESA BARASA DEBTOR

AND

BILLY OSCAR LUTTA T/A LUFREE AUCTIONEERS RESPONDENT

(Being an appeal from the ruling of Hon. C.A.S Mutai Senior Principal Magistrate delivered in 28th May 2021 at Bungoma CMCC Misc Application No 311 of 2019)

JUDGMENT

1. The respondent at the magistrate's court sought to have his bill of costs assessed and the trial magistrate in his ruling dated 22nd July 2019 was of the view that the appellant gave instructions to the respondent and taxed the auctioneer's costs at Kshs 19,985/-.
2. The appellant has now preferred this instant appeal on the following grounds:
 1. That the learned trial magistrate erred in law and fact in ruling that Impact Trust is the same as Impact Finance Sacco.
 2. That the trial learned Magistrate erred in law and fact when he disregarded the appellant's submissions and evidence on record, thus arriving at a wrong conclusion.
 3. That the learned Magistrate erred in law and fact by proceeding to tax the respondent at 19,953/- when there was no cause of action against the appellant.



3. The parties have each filed their respective submissions on the appeal. The appellant in its submission argues that the respondent sued the wrong party. The respondent attacked the competency of the appeal on the grounds that the appellant failed to extract and annex a certified order from which it was being appealed.
4. Before I delve into the merits of this case, I must first consider whether the appeal before the court is proper. The appeal before the court challenges the amount of fees payable to the auctioneer and is governed by Rule 55 of the Auctioneer's Rules which provides as follows:

“ 55

- (2) where a dispute arises as to the amount of fees payable to an auctioneer –
 - a) in proceedings before the High Court; or
 - b) where the value of the property attached or repossessed would bring any proceedings in connection with it within the monetary jurisdiction of the High Court, a registrar, as defined in the Civil Procedure Rules (Cap 21, Sub Leg), may on the Application of any party to the dispute assess the fee payable.
4. An appeal from a decision of a registrar or a magistrate or Board under sub-rules (2) and (3) shall be to a judge in chambers.
5. The memorandum of appeal, by way of chamber summons setting out the grounds of the appeal, shall be filed within 7 days of the decision of the Registrar or Magistrate”
5. The appellant should have filed this appeal by way of chamber summons within 7 days. The magistrate's ruling was delivered on 28/5/2021, and the appeal was filed on 11/6/2021 after the lapse of 7 days. The appellant did not file any application seeking leave to file the reference out of time. The appeal is not competent as the appellant has failed to observe the procedure set out in Rule 55 of the Auctioneer's Rules and is therefore dismissed. There shall be no orders as to costs.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 31ST DAY OF OCTOBER 2024.

R.E. OUGO

JUDGE

In the presence of:

For the Appellant

For the Respondent

Wilkister - C/A

