



REPUBLIC OF KENYA



KENYA LAW
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**Gikonyo t/a Garam Investments v National Social Security Fund
Board of Trustees (Miscellaneous Application 231 of 2014)
[2024] KEHC 16717 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 231 OF 2014
BM MUSYOKI, J
DECEMBER 20, 2024**

BETWEEN

JOSEPH GIKONYO T/A GARAM INVESTMENTS APPLICANT

AND

**NATIONAL SOCIAL SECURITY FUND BOARD OF
TRUSTEES RESPONDENT**

RULING

1. By chamber summons dated 8-07-2021 the applicant prays for the following orders;
 1. Spent.
 2. The time limit for lodging this appeal from the decision of the Deputy Registrar Hon. Stephanie Githogori dated 23-02-2021 be and is hereby extended from 30-06-2021 and the appeal herein be and is hereby extended and deemed as duly lodged within the time prescribed under Rule 55(5) of the Auctioneer's Rules, 1997.
 3. The ruling of Honourable Stephanie Githogori dated 23-06-2021 be varied or set aside so as to base the Auctioneer's costs on the sum of Kshs 461,502,009/= being the value of the proclaimed goods as per the warrants dated 17-03-2011 and proclamation notice dated 21-03-2021 as opposed to the sum of Kshs 60,476,644/= which has no relation to the bill of costs.
 4. In the alternative the bill of costs be remitted to a different taxing officer for taxation.
2. The applicant has explained that the ruling was set to be delivered on 23-06-2021 but was delivered two days earlier (on 21-06-2021) without notice. Its advocate appeared before the taxing officer on the



scheduled date but the same was not listed and when he enquired, he was informed that the ruling would be uploaded in the portal which was never done until the expiry of the period allowed by the law to lodge an appeal. As at 5-07-2021, the applicant had not been supplied with a copy of the ruling. The applicant was late in filing the appeal by nine days which to me is not inordinate.

3. The respondent has not given a different version of the event leading to the delivery of the ruling. Although the ruling is shown to have been delivered on 23-06-2021 and not 21-06-2021 as alleged by the applicant, I am minded to give the applicant the benefit of doubt and accept the given reasons which in normal circumstances would be sufficient for this court to exercise its discretion to extend time for filing appeal against the taxation. I exercise my discretion and extend the time in terms of prayer two of the application. The appeal is admitted out of time.
4. I now proceed to consider the prayer for setting aside the taxation. This is the 3rd appeal on the applicant's costs. The first application was filed by the respondent after the Honourable C. Wanyama taxed the applicant's bill on 12-02-2019 based on the value of Kshs 289,132,000.00. The 2nd appeal was by the applicant against the same ruling. In both appeals which were heard together, the respondent contended that the taxation should have been based on Kshs 60,476,644.00 while the applicant argued that the amount should have been Kshs 461,502,009.00. Honourable Lady Justice Grace Nzioka delivered a ruling on the appeal on 28-05-2020 in which she remitted the bill back for taxation by a different taxing officer but did not pronounce herself on what value should the taxation be based.
5. Following the ruling of the Judge aforesaid, the bill was placed before Honourable Stephanie Githogori who after hearing the parties taxed the bill at Kshs 3,508,505.00 based on the value of Kshs 60,476,644.00. It is clear that there is no dispute on the subject matter the taxation should have been based on. Both parties are agreeable that the same should have been based on the value of the proclaimed goods. The point of departure is how the taxing officer should have ascertained the value of the proclaimed goods. In her ruling dated 23-06-2021, which is being challenged in the current application, the taxing officer held that;

‘I find that the value of goods cannot be determined from the documents provided. I have considered the value already admitted by the respondent of Kshs 60,476,644.00, noted there were various items missing from the respondent's valuation report. I have also considered the various applications filed by the parties in this matter noting the importance of this matter to the parties and used my consideration to tax item 10 at Kshs 3,000,000.00.’

6. In my assessment, it is the above holding especially the part where the taxing officer considered the value admitted by the respondent that has provoked this appeal. According to the applicant, the value which should have been considered as the basis for taxation is that which is indicated in its proclamation notice dated 21-03-2011. The applicant argues that after it gave the value of the proclaimed goods in its proclamation notice, it was upon the respondent to prove the value of the goods by asking for valuation to be done. In other words, the applicant avers that the respondent should have taken advantage of Rule 10 of the [Auctioneers Rules](#) and seek to have the value of the proclaimed goods assessed. The said Rule states that;

‘A debtor may, at any time before the property seized or repossessed is sold, apply to a court for an order that the property be valued by an independent valuer.’

7. My interpretation of the above Rule is that, the debtor or the person being distressed may opt to have the proclaimed assets be valued before they are sold. It does not place the burden on the debtor to prove the value of the seized property. I do believe that this Rule was meant to give the property owner or the debtor a widow to prevent their properties from being sold at an undervalued price which would



result to loss or damages to the debtor. In the instant case, the applicant is the one who seeks to benefit from the ascertainment of the value of the proclaimed goods and as such the burden of proof of the value rested on it. If the law allowed the taxing officer to blindly rely on the value indicated by the auctioneers, nothing would prevent the auctioneer from putting a value of say 100/= worth pen at one million in order to have its fees determined at a higher scale. I don't think that this was the purpose for which the Rule was legislated.

8. The other argument put forth by the applicant is that the taxing officer erred in holding that the proclamation did not include computers, cabinets and office chairs which were among the properties it had proclaimed thereby giving a low value. I have read the ruling of the taxing officer and I have not seen anywhere where she imputed what the applicant claims. The taxing officer's holding on the items was different from what the applicant imputes in its submissions. The taxing officer held that;

‘I have noted however in the proclamation report, it included various other items which were proclaimed which the respondent had not included in its reports including computers, office desks, chairs, printers, book shelves, telephone heads, filing cabinets, digital cameras, film processors, about 100 flat screen computers among other items.’

9. The applicant has either distorted or miscomprehend the above holding. In my understanding, what the taxing officer was saying was that the report in the ministry of transport's report vide letter dated 2-08-2018, had left out the listed items. Even then, the omission of the items from the respondent's report did not take the burden of proof from the respondent. The respondent gave the value as given by the ministry in order to counter the value given by the applicant in the proclamation notice. It was the applicant's bill and it had the burden to prove what it had asserted. I agree with the taxing officer that the documents supplied by the parties were not of help in assisting the court in ascertaining the value of the proclaimed property.
10. I have not seen any error of principle committed by the taxing officer to warrant interfering with her decision and I consequently hold that the appeal lacks merit. The application by way of chamber summons dated 8-07-2021 is hereby dismissed it with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Githaiga for the Applicant and Mr. Adano for the Respondent

