



**Autoports Freight Terminals Limited v Opar t/a Skypac
Consult Auctioneers (Miscellaneous Application E576 of 2024)
[2025] KEHC 1683 (KLR) (Commercial and Tax) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E576 OF 2024
FG MUGAMBI, J
FEBRUARY 7, 2025**

BETWEEN

AUTOPORTS FREIGHT TERMINALS LIMITED APPLICANT

AND

BRIAN ELLY OPAR T/A SKYPAC CONSULT AUCTIONEERS .. RESPONDENT

RULING

Background and introduction

1. This Ruling determines the application dated 16th July 2024, brought under Rule 55(4) and (5) of the Auctioneers Rules, Order 22 Rule 22 of the Civil Procedure Rules, Article 159(2)(d) of the *Constitution* and Sections 1A and B and 3A of the *Civil Procedure Act*. The application seeks to set aside a Ruling delivered on 15th July 2024 arising from a taxation of an auctioneer's bill of costs dated 6th May 2024 between the parties. The application is supported by the affidavits sworn on 16th and 30th July 2024 by Mohsin Chaudry. It is opposed through a replying affidavit sworn by Brian Elly Opar on 23rd July 2024.
2. The background to this appeal is a landlord/tenant relationship that existed between Kay Construction Company Ltd (not a party to the dispute), and the appellant. The appellant contends that the lease agreement between them was terminated in May 2024 following the settlement of all outstanding rent arrears. Despite having settled these arrears, the appellant takes issue with the respondent for purporting to levy distress for rent and later issuing a bill of costs for the same. The appellant contends that the taxing master allowed the respondent's application without considering the objections raised by the appellant.



Analysis and Determination

3. I have carefully considered all the pleadings, evidence, submissions and cases cited by the parties. The cardinal issue for determination is whether the Ruling of the taxing master should be set aside and the auctioneer's bill of costs re-assessed as prayed by the appellant.
4. Rule 55 of the Auctioneers Rules, under which this appeal is brought, provides as follows:
 - “(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. It is evident from the above provisions that the first point of recourse for a dispute regarding the fees payable to an auctioneer is either the Auctioneer's Board or a taxing master, both of whom are tasked with assessing the fees owed. Such an assessment must adhere to the prescribed rules governing the remuneration of licensed auctioneers as detailed in the Fourth Schedule of the Auctioneers Rules, 2022.
6. It is this type of determination that forms the basis for a subsequent appeal, to this court. Since the taxation of an auctioneer's bill of costs is, for all intents and purposes, still a form of taxation, the established principles governing taxation and the setting aside of decisions made by a taxing master remain applicable. The principles on setting aside such decisions were clearly articulated by the Court of Appeal in *Kipkorir, Tito & Kiara Advocates V Deposit Protection Fund Board*, [2005] eKLR as follows:

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”
7. It is equally well established that a court dealing with a reference, or as in this case, an appeal arising from an assessment or taxation of costs must exercise great caution. This is because the taxing master's assessment or taxation is an exercise of judicial discretion. However, precisely because the process involves the exercise of discretion, it is paramount for the taxing master to provide clear and detailed reasons for their decision. Doing so ensures that the parties understand the basis for the assessment and enables meaningful oversight by this court.
8. The importance of this transparency is heightened by the fact that a court may interfere with a taxing master's decision if it is demonstrated that the taxation was based on an error of principle or that the



fee awarded is so grossly excessive as to constitute an erroneous estimate of the sums due. (See the case of *Bank of Uganda V Benco Arabe Espanaol*, [1999] 2 EA 45).

9. Building on these principles, it is clear that the foundation upon which an appellate court evaluates the reasonableness of taxation and the proper exercise of discretion by the taxing master rests on the reasons given for the assessment. These reasons are indispensable, as they form the basis upon which a reference or appeal may be filed. This principle is encapsulated in Rule 55, which reflects a general rule of taxation. In the absence of clear reasons, a party is effectively denied the ability to challenge the taxation, as there would be no grounds upon which to mount an objection or file a reference or appeal.
10. From the record before me, it is evident that the respondent filed an application dated 6th May 2024 seeking to tax their bill of costs. This application was opposed by the appellants through the replying affidavit of Mohsin Chaudry sworn on 28th May 2024. The appellants also filed their written submissions dated 6th June 2024.
11. In their pleadings before the taxing master the appellants raised several objections to the bill of costs, including the mode of service of the proclamation notice. They also objected to item 1 concerning the value of the goods proclaimed or sold, item 3 regarding ownership of the proclaimed items and the fact that the respondent proclaimed goods allegedly valued at over Kshs.40,000,000/= to recover rent arrears of Kshs.5,443,679.94 and based its commission on the former, item 4 on travel expenses, item 5 on investigation costs, item 6 on stationery and telephone expenses, and item 7 on VAT.
12. I have carefully reviewed the Ruling of 15th July 2024. The taxing master, after addressing herself to 2 issues: the issue of service of the proclamation and ownership of the motor vehicles; concluded that the Notice of Motion application dated 6th May 2024 was merited and allowed it as prayed. However, the appellants' contention that the taxing master failed to consider the substantive issues they raised against the respondent's application is well-founded. The taxing master's failure to address the critical objections to specific items in the bill of costs meant there were no reasons or findings provided on those items, as required by law.
13. Having reached this conclusion, what then is the proper course of action to take? In *Steel Constructions Petroleum Engineering (EA) Ltd V Uganda Sugar Factory*, (1970) EA 141 Spry JA at page 143 stated as follows:

“Although a judge undoubtedly has jurisdiction to retax a bill himself he should as a matter of practice do so only to make corrections which follow from his decision and that general rule is that where a fee has to be reassessed on difference principles, the proper course is to remit to the same or other taxing officer. I would agree that, as a general statement, that is correct adding only that it is a matter of juridical discretion.”
14. Flowing from the above, the only logical course of action is to order a fresh taxation of the bill of costs, excluding the two findings already made by the taxing master. These two issues, relating to the mode of service and ownership of the motor vehicles, will not be re-litigated, as doing so would amount to the taxing master sitting on appeal over their own decision. However, the parties will have the opportunity to scrutinize the remaining items in the bill afresh, and if necessary, they may approach this court thereafter.

Disposition

15. Accordingly, the application dated 16th July 2024 is allowed in the following terms:



- i. The Ruling of the taxing master dated 15th July 2024 in the matter of the taxation of the auctioneer's bill of costs dated 6th May 2024 is hereby set aside.
- ii. The Notice of Motion dated 6th May 2024 shall be determined strictly within the confines set out in this decision by a taxing master other than Hon. B.M. Cheloti (PM).
- iii. The costs of this application shall abide the outcome of the re-taxation.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 7TH DAY OF FEBRUARY 2025.

F. MUGAMBI

JUDGE

