



**Olamuran & another v Elegwa (Miscellaneous Civil Application
E1139 of 2024) [2025] KEHC 4767 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1139 OF 2024**

TW CHERERE, J

MARCH 6, 2025

BETWEEN

PATRICK SINDANI OLAMURAN 1ST APPLICANT

HASSAN MAINDE 2ND APPLICANT

AND

MIZERETI ESENDI ELEGWA RESPONDENT

RULING

1. The Applicants' chamber summons dated 11th December 2024 brought under Section 2 of the Auctioneers Act 1996 Laws of Kenya and Sections 1A and 3A of the Civil Procedure Act seeks the following orders:
 1. That the decision of the taxing officer given on 06th December 2024 together with all consequential orders be set aside forthwith
 2. That the Honourable court be pleased to order the Auctioneer's Bill of Costs dated 1st August 2024 be taxed afresh regarding items 3,4,5,6,7,8,9,10,11,12,13,14 and 15.
 3. That this Honourable Court be pleased to issue any other order and/or direction it deems fit to grant in the circumstances.
 4. That the costs of this Application abide the outcome of the Appeal.
2. The application is based mainly on the ground that the Applicants are aggrieved by the decision of the taxing master contained in the ruling dated 06th December 2024.
3. The application is further supported by an affidavit sworn on 11th December 2024 by Damaris Lubanga, Advocate for the Applicants where she reiterates the grounds on the face of the application.



- In addition, it is averred that the Applicants have an arguable appeal with a high chance of success and that the Applicants are ready to offer security in the form of a bank guarantee as security for the costs.
4. The application is opposed by way of an affidavit sworn on 20th January 2025 by Kisiang'ani Eddah, Advocate for the Respondent who avers that the application is fatally defective and offends rule 55 rule 5 of the Auctioneers Rules and there is therefore no competent appeal before the court for determination.
 5. In their submissions dated 28th February 2025, the Applicants submitted that item 4 on proclamation fees ought to be charged at KES. 4,000/- as provided under the Fourth Schedule of the Auctioneers Act No 5 of 1996.
 6. The Applicants urged that under the Fourth Schedule, Part II sub part 12 of the Auctioneers Act No 5 of 1996, item 6 on labor costs ought not to have been increased since the auctioneer neither provided the specifics of labor expended nor attached evidence of complexity of work.
 7. The Applicants urged that item 7 be taxed off for the reason that it was not supported by a receipt.
 8. The Applicants also urged that item 8 be taxed off there being no evidence that Applicant obtained a court order to secure police assistance as provided under Section 9(2) of the Auctioneers Act.
 9. The Applicants similarly urged that item 9 on investigations be struck out there being no evidence that the Applicant engaged any investigator.
 10. The Applicants urged that whereas the Fourth Schedule, Part II sub part 10 provides for advertising, item 10 ought to be taxed off there being no evidence of any advertisement by the auctioneer.
 11. Concerning item 11 on valuation fees, the Applicants argue that there was no documentary evidence or otherwise in support thereof.
 12. In his submissions dated 26th February 2025, the Respondents submitted that there was no evidence of error of principle or that the fees awarded was manifestly excessive to justify the court's interference. The Respondent restated that the application was defective and urged that it be struck out. Reference was made to the case of Ezekiel Kiminza t/a Autoland Auctioneers vs Mistry Naran Mulji [2017] eKLR.
 13. Upon considering the application, the following issues arise for determination:
 - i. Whether the application is competent in light of the alleged non-compliance with Rule 55(5) of the Auctioneers Rules, and if not, whether the appeal should be dismissed.
 - ii. Whether the Auctioneer's Bill of Costs dated 01st August 2024 should be taxed afresh with respect to the specified items, specifically items 4 through 15, as sought by the applicants.
 - iii. Whether there was an error in the taxing officer's decision regarding the contested items, and if so, whether the decision should be set aside.
 - iv. Whether the Applicants are entitled to any other orders or directions that the Court deems appropriate, including the provision of security for costs.
 14. The Applicants' grounds for the application are that the decision of the taxing master was flawed, and that certain items in the Bill of Costs were improperly taxed, either due to lack of supporting evidence, excessive charges, or non-compliance with statutory provisions.



15. The Respondent, on the other hand, argues that the application is defective and should be struck out for failure to comply with Rule 55(5) of the Auctioneers Rules. The Respondent also submits that the decision made by the taxing master was correct and that the application is without merit.
16. The key issue here is whether the Applicants have adhered to the procedural requirements stipulated in the Auctioneers Rules, specifically Rule 55(5), which governs appeals from the decision of a taxing officer.
17. Rule 55 of the Auctioneers Rules provides:
 - (4) An appeal from a decision of a registrar or a magistrate or the 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.
18. The Applicants in this matter no doubt moved the court by way of chambers summons and thus complied with the necessary procedural requirements as per the Auctioneers Rules.
19. The Respondent's contention that the court has not been properly moved is therefore without merit and the decision in *Ezekiel Kiminza t/a Auto Land Auctioneers v Mistry Valji Naran Mulji* [2017] KEELC 1117 (KLR) is distinguishable from the facts in this case.
20. Under item 4 on fees for proclamation, the taxing master rightly found that the provisions of the Fourth Schedule Part II sub part 4 provides that fees on attachment is determined by the value of the goods and transport, storage, advertising, insurance and other disbursements expenses in addition to fees where attachment or reposition is stayed or postponed or money tendered after attachment or reposition but before sale.
21. Upon review of the statutory provisions and evidence presented, I find no error in the taxing officer's assessment, and thus find that item 4 was correctly taxed.
22. The Fourth Schedule, Part II, Sub-Part 12 of the Auctioneers Act No 5 of 1996, allows for an increase in fees based on factors such as complexity, skill, specialized knowledge, and labor expended by the auctioneer.
23. No evidence was presented to show that the auctioneer incurred any expenses related to specialized knowledge or labor. Consequently, the increase under item 6 is unsustainable.
24. Regarding item 7, towing charges were not supported by a receipt. The taxing officer ought to have ensured that all disbursements were properly documented. In the absence of such proof, this item cannot be sustained.
25. Similarly, item 8 lacks justification, as there is no evidence that a court order was obtained for police assistance, as required under Section 9(2) of the Auctioneers Act.
26. Item 9 on investigation fees is also unsupported, as no proof was provided that the Respondent engaged an investigator.
27. Concerning item 10, no evidence was adduced to show that any advertisement was made, as required under the Fourth Schedule, Part II, Sub-Part 10 of the Auctioneers Act.
28. Likewise, item 11 on valuation fees is unsubstantiated, as no supporting documentation was provided.



29. In light of the foregoing, it is evident that the taxing master misapplied the law by allowing items 6, 7, 8, 9, 10, and 11, despite the lack of necessary supporting evidence
30. Accordingly, the chamber summons dated 11th December 2024 is allowed to the extent that:
 1. The decision of the taxing officer made on December 6, 2024 is set aside.
 2. The Auctioneer's Bill of Costs dated 01st August 2024 shall be taxed afresh, with specific reference to items 6, 7, 8, 9, 10, and 11, in accordance with this ruling and the provisions of the Auctioneers Act, 1996, and the Auctioneers Rules.
 3. The Respondent shall bear the costs of this application

DELIVERED AT NAIROBI THIS 06TH DAY OF MARCH 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Ms. Lubanga for Kimondo, Gachoka & Co. Advocates

For Respondent - Mr. Kiptanuifor Waiganjo Wachira & Co. Advocates

