



Registered Trustees Catholic Diocese of Kericho v Onsongo t/a Hegeons Auctioneers (Civil Miscellaneous Application E061 of 2024) [2025] KEHC 2414 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL MISCELLANEOUS APPLICATION E061 OF 2024**

**JK SERGON, J
MARCH 13, 2025**

BETWEEN

REGISTERED TRUSTEES CATHOLIC DIOCESE OF KERICHO ... APPLICANT

AND

**HEZRON GETUMA ONSONGO T/A HEGEONS
AUCTIONEERS RESPONDENT**

RULING

1. The application coming up for determination is a notice of motion dated 28th October, 2024 seeking the following orders;
 - (i) Spent.
 - (ii) Spent.
 - (iii) That this Honourable Court be pleased to order a stay of execution of the judgement delivered by Honourable Japhet Bii (Senior Resident Magistrate) delivered and dated 4th October 2024 pending hearing and determination of the Civil Appeal No. E019 of 2022. Which arose from the judgement delivered by Hon.B.R Kipyegon in the Chief Magistrate Court at Kericho delivered on the 28th of July 2021 in CMCC No. 220 of 2017.
 - (iv) Spent
 - (v) That costs of this application be in the cause.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Amos Andama an advocate of the High Court of Kenya practicing as such with the firm of M/S.Kiplenge, Andama & Makau Advocates, who have the conduct of this matter on behalf of the Applicant. He avers that he is familiar with the facts and proceedings in this matter and therefore competent to swear this affidavit with the authority of the Applicant.



3. He avers that the court delivered a ruling on 16/8/2023 in respect to the Respondents (Hegeons Auctioneers) Bill of costs dated 13th May 2023 wherein the Bill of costs was taxed at Kshs 247, 609/=.
4. He avers that the Applicant thereafter brought an application dated 24th August 2023 which sought for stay of execution of the ruling and orders delivered on the said 16th August 2023 while seeking clarification from court on what the Ruling pertended.
5. He avers that the Application dated 24th August 2023 came up for hearing on 13th September 2023 where there was no appearance on the part of the Applicant. Consequently, the said application dated 24th August 2023 was dismissed for want of prosecution.
6. He avers that the Applicant brought another application dated 13th September, 2023 and in response to the Applicant's application dated 13th September 2023, the Respondent, raised a Preliminary Objection dated the 26th September 2023.
7. He avers that the court delivered a ruling on the Preliminary objection dated 4th October 2024 where the Preliminary Objection was upheld with costs to the Respondent.
8. He avers that the Respondent has filed a request for extension of warrant of attachment and sale against the Applicant's properties.
9. He avers that it is unfair for the warrant of attachment to be executed when the Applicant has not been accorded a fair trial.
10. He avers that the orders sought herein shall ensure that this matter is heard and conclusively determined.
11. He avers that this matter is still pending hearing and determination and therefore it is still tenable to issue the orders sought.
12. He avers that this application is made in good faith at the earliest possible instance and in the interest of justice.
13. Hezron Getuma Onsongo filed a replying affidavit and stated that he is a duly licensed "Class B" auctioneer duly compliant with the provisions of the [Auctioneers Act](#) No. 5 of 1997 and amended Rules 2012 trading as Hegeons Auctioneers.
14. He avers that the instant application offends the provisions of rule 55 (4) and (5) of the Auctioneers Rules, therefore a waste of court's time and therefore ought to be dismissed with costs.
15. He avers that the instant application is brought under the wrong provisions of law disregarding the fact that the subject matter in issue is guided by the provisions of the [Auctioneers Act](#) and it is Amended Rules, 2012.
16. He avers that in a bid to execute the judgment/decreed in Kericho CMCC No. 220 of 2017 Hegeons Auctioneers issued valid warrants of attachment and sale against the applicant on 29th March, 2022 and that upon receipt of the warrants of attachment and sale on 30th March, 2022 proceeded and proclaimed moveable properties of the respondents a fact that is not disputed by the respondents.
17. He avers that before the period for proclamation lapsed to allow for attachment, he was served with an order dated 6th April, 2022 which did not stay execution, he however allowed the parties to negotiate.
18. He avers that he was never served with any orders staying taxation of auctioneers fees which have never been settled to date.



19. He avers that the applicants through their advocates participated in the taxation process and that the court/taxing master considered the responses and submissions by the parties proceeded to tax the bill of costs to scale and tendered a ruling.
20. He avers that the applicants are seeking to stay payment of his costs by the basis that there is a pending appeal Civil Appeal No. E019 of 2022.
21. He avers that he is not a party to the appeal and that there are no orders barring/denying him the right to taxation costs incurred out of a service already rendered.
22. He avers that auctioneer's costs are subject to the provisions of the *auctioneers act* and rules and that at the time he rendered services he had valid warrants of attachment and sale and that the same have not been challenged to date.
23. The matter came up for inter partes hearing, the learned counsel for the applicant stated that they do not intend to submit on the application and would therefore rely on the grounds and affidavit filed in support of the application. The learned counsel for the respondent stated that he filed a replying affidavit and that the matter arises the taxation of auctioneers fees and therefore the matter ought to have been filed under the *Auctioneers Act* and if the application is to be treated as a reference, the same was filed out of time and should have been brought under a chamber summons not a notice of motion.
24. I have considered the application and response by parties and I find that the issue (s) for determination are whether to order a stay of execution of the judgement delivered by Honourable Japhet Bii delivered and dated 4th October 2024 pending hearing and determination of the Civil Appeal No. E019 of 2022 which arose from the judgement delivered by Hon.B.R Kipyegon in the Chief Magistrate Court at Kericho delivered on the 28th of July 2021 in CMCC No.220 of 2017.
25. On the issue as to whether to stay execution of the judgment delivered by Honourable Japhet Bii dated 4th October, 2024 pending hearing and determination of Civil Appeal No.E019 of 2022 which arose from the judgement delivered by Hon.B.R Kipyegon in the Chief Magistrate Court at Kericho delivered on the 28th of July 2021 in CMCC No. 220 of 2017. On one part, the applicant is seeking to stay payment taxed auctioneers fee on the basis that there is a pending appeal to wit Civil Appeal No. E019 of 2022. On the other part, the respondent maintains that the applicants through their advocates participated in the taxation process and that the court/taxing master considered the responses and submissions by the parties proceeded to tax the auctioneer's bill of costs to scale and tendered a ruling. The respondent is adamant that whereas the applicants are seeking to stay payment of his costs on the basis that there is a pending appeal Civil Appeal No. E019 of 2022, he is not a party to the appeal and that there are no orders barring/denying him the right to taxation costs incurred out of a service already rendered. The respondent contended that auctioneer's costs are subject to the provisions of the *auctioneers Act* and rules and that at the time he rendered services he had valid warrants of attachment and sale and that the same have not been challenged to date.
26. Having carefully considered the arguments preferred by the parties, the respondent being a duly licensed auctioneer is entitled fees for services rendered and the judgment debtor is always liable to pay Auctioneers fees except in the circumstances set out in the proviso to section 55 of the *Auctioneers Act* No. 5 of 1996, the said section states as follows;
 - “ 55. Fees and disbursements payable to an auctioneer
 - (1) Except as may be provided by any other written law or by contract the fees set out in the Fourth Schedule payable to the auctioneer for the attachment, repossession and sale of movable



and immovable property under court warrants or letters of instructions shall be charged in accordance with these Rules.

- (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.
- (3) In any other case where a dispute arises as to the amount of fees payable to an auctioneer a magistrate or the Board may, on the application of any party to the dispute, assess the fees payable.
- (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.”

27. It is clear to this court that, the matter arises the taxation of auctioneers fees and therefore the matter ought to have been filed under the [Auctioneers Act](#) and if the application is to be treated as a reference, the same has been filed out of time and should have been brought under a chamber summons not a notice of motion. The applicant has not adhered to the provisions [Auctioneers Act](#) on the proper procedure of challenging the taxation of the auctioneers fees, the provisions of section 55 (4) and (5) of the [Auctioneers Act](#) are coached in mandatory terms and therefore this court finds him undeserving of the orders sought in the instant application.

27. Consequently, the notice of motion dated 28th October, 2024 is hereby dismissed. Each party to bear their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 13TH DAY OF MARCH, 2025

J.K. SERGON

JUDGE

In the presence of:-

C/Assistant - Rutoh

Miss Njeni for the Applicant

Miss Cherotich holding brief for Ngeno for Respond

