



**Speedman Commercial Agencies v Commissioner of Income  
Tax & another (Miscellaneous Application E1177 of 2020)  
[2025] KEHC 2409 (KLR) (Commercial and Tax) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2409 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E1177 OF 2020**

**MA OTIENO, J**

**MARCH 6, 2025**

**BETWEEN**

**SPEEDMAN COMMERCIAL AGENCIES ..... APPLICANT**

**AND**

**THE COMMISSIONER OF INCOME TAX ..... 1<sup>ST</sup> RESPONDENT**

**KINGSWAY TYRES & AUTOMART LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before the court for determination is the applicant's notice of motion application dated 24/5/2024 filed pursuant to Order 51, Rule 1 of the Civil Procedure Rules and sections 1A, 1B, and 3A of the [Civil Procedure Act](#), in which the applicant sought an order to adopt the Certificate of Taxation dated 1/2/2024 as a decree of this court.
2. The grounds of the application were set out in its body and the supporting affidavit of Phillip Jasper Wishaminy sworn on 1/2/2024. The grounds were that the applicant filed a party and party bill of costs which was allowed as against the 1st respondent and taxed at Kshs.337,119/-.
3. The applicant averred that a certificate of taxation was issued to that effect on 1/2/2024 and prayed to have it adopted as a decree of this court.
4. The 1st respondent opposed the application vide a replying affidavit sworn on 8/10/2024 by Ms. Chelangat Mutai, an Advocate practising within the Respondent.
5. Ms. Mutai narrated the background and litigation history between the parties herein stating that a dispute arose between the applicant and the 1st respondent regarding the fees payable to the applicant who assisted the 1st respondent in the recovery of taxes from the 2nd respondent. The dispute was



conclusively determined in High Court Miscellaneous Civil Application No. 302 of 2005, where the court ruled on the applicant's entitlement to fees.

6. It was averred that the 1st respondent complied with the said ruling and attempted to pay Kshs. 130,496 however, the applicant's advocates rejected the payment, insisting to have it paid to the court.
7. That the 2nd respondent failed to honor its payment of taxes and filed Miscellaneous Civil Application No. 1288 of 2004, challenging the enforcement of the distraint process and the High Court, by judgment delivered on 16/5/2007, dismissed the 2nd respondent's suit with costs awarded to the 1st respondent and applicant herein.
8. That the applicant subsequently filed a bill of costs against the 2nd respondent, which was taxed at Kshs. 337,119 and the applicant, upon obtaining a certificate of costs on 21/7/2014 started demanding payment of Kshs. 391,058 from the 1st respondent instead of pursuing the 2nd respondent.
9. The 1<sup>st</sup> Respondent argued that the demand was based on Rule 11(2) of the Value Added Tax (Distraint) Regulations 1990 and the High Court's decision in Kingsway Tyres & Automart Ltd v Richard Muchai Auctioneers, however, the costs awarded in Misc. Civil Application No. 1288 of 2004 were court costs and not fees under Rule 11(2) of the Distraint Regulations.
10. It was further the 1st respondent's case that the applicant's demand was based on two flawed suppositions: that the court-awarded costs form part of the distraint fees and that the subsidiary legislation (VAT Distraint Regulations) can override the Civil Procedure Act.
11. Further that the costs of court proceedings initiated by the 2nd respondent should follow the High Court's order, meaning the 2nd respondent should bear them and that by attempting to enforce the certificate of costs against the 1st respondent instead of the 2nd respondent, the applicant is effectively trying to overturn the court's discretion.

#### **Analysis and determination:**

12. The 1st respondent filed written submissions dated 9/10/2024, while the applicant did not file submissions. The court has considered the submissions, pleadings, and annexures filed in this matter.
13. The applicant seeks to have the certificate of taxation dated 1/2/2024 adopted as a decree of this court. The certificate of taxation is annexed as 'P JW-1' in the applicant's supporting affidavit.
14. A brief background of this issue is that the 2nd respondent filed the suit Misc. Civil Application No.1288 of 2004 against the 1st respondent herein, with the applicant listed as an interested party.
15. The 2<sup>nd</sup> respondent's said suit was in the nature of a judicial review application whereby the 2nd respondent sought an order, inter alia, to quash the warrants of distress issued by the 1st respondent against it. The application was opposed by the 1st respondent and the applicant herein. Upon consideration of its merits, the court made the following order:

“The Notice of Motion dated 18th October 2004 is hereby dismissed with costs to the Respondent and Interested Parties.”

16. A plain reading of the judgment reveals that the costs of the suit instituted by the 2nd respondent were granted to the 1st respondent and the applicant herein, and the 2nd respondent was to pay the same. The court did not direct that the applicant's costs were to be borne by the 1st respondent. The court's finding was in line with the trite position that costs follow the event, which means that costs are usually granted to the successful party in litigation.



17. In any case, as can be seen from the record, the applicant had earlier filed the suit Misc. Civil Application No.302 of 2005: Speedman Commercial Agencies Limited vs. Kenya Revenue Authority, whereby the court resolved the issue regarding the fees payable to the applicant from the 1st respondent. Vide a ruling dated 11//2/2014, the court ordered the 1st respondent to pay the applicant fees of Kshs.130,496 for the services rendered as its distraint agent.
18. The upshot of the forgoing deliberations is that the present application is fundamentally flawed as the applicant is seeking to obtain costs from the wrong party. The certificate of costs dated 1/2/2024 granted by the deputy registrar is also defective to the extent that the it states that the applicant's costs are to be borne by the 1st respondent contrary to the judgment in Misc. Civil Application No.1288 of 2004. The same is therefore quashed and/or set aside.
19. As such, the instant application is dismissed with costs granted to the 1st respondent.
20. It is so ordered.

**SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**ADO MOSES**

**JUDGE**

In the presence of:

Moses – Court Assistant

