



REPUBLIC OF KENYA



KENYA LAW
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Odoyo & another v George Arunga Sino t/a Maywood Auctioneers (Civil Appeal E096 of 2023) [2025] KEHC 6771 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E096 OF 2023**

**BM MUSYOKI, J
MAY 23, 2025**

BETWEEN

ANDREW OTIENO ODOYO 1ST APPELLANT

MOSES OCHIENG ONYANGO 2ND APPELLANT

AND

GEORGE ARUNGA SINO T/A MAYWOOD AUCTIONEERS RESPONDENT

(Being an appeal from ruling and order of Senior Principal Magistrate's Court at Nyando (S.O. Temu SPM) in civil suit number 133 of 2019 dated 26th January 2023)

JUDGMENT

1. The appellants had been sued in Senior Principal Magistrates Court at Nyando by one Jane Adhiambo Jalango for compensation for personal injuries arising from an accident that occurred on 1-04-2019 involving the appellant's motor vehicle registration number KCQ 191Y. After hearing, the trial court awarded her Kshs 1,500,000.00 plus costs and interest. The appellants did not pay the decretal sum in time resulting to proclamation and attachment of their assets. Upon settlement of the decretal sum, there were left auctioneers fees and charges which were contested leading to filing of auctioneer's bill of costs dated 19-02-2021. The auctioneer involved in the matter was the respondent in this appeal.
2. The said auctioneer's bill, has been taxed back and forth this being the third time the bill is being challenged. The previous challenges have attracted controversy just like the current one. I say controversy because the processes adopted by the trial court raise suspicions. How else would one refer to a situation where a consent is executed in absence of one of the parties and the same is set aside with the auctioneer writing protest letters as the one dated 18-03-2021.
3. Thereafter, some handwritten document which is not signed and not in the handwriting of the Magistrate showing figures totalling to Kshs 813,536.00 which is the same figure appearing in the order being appealed found its way in the court file. On 26-09-2024, Honourable Lady Justice Aburili



made comments about the document and observed that there was no ruling on the taxed costs and she directed parties' advocates to jointly peruse the court file and come back on 24-10-2024 for further directions. On 24-10-2024, only the advocate for the respondent showed up and indicated that the advocate for the appellant had been unwell and expressed desire to have the matter settled amicably. That settlement never came.

4. I am now faced with an appeal which has no ruling so to speak. The Honourable Magistrate made a five words' order which to me just as my predecessor stated, is not a ruling. To make it worse, there is no coram for 26-01-2023 when the order was purportedly made. All that is recorded for that day is 'Court: Bill is assessed at KShsh 813,536.00' then followed by a signature.
5. The above makes it difficult for anyone to tell what led to the assessment of the bill at a figure that was almost half of the decretal sum. No one can read the mind of the Honourable Magistrate. The principal that judicial officers and judges shall speak through their judgements is not farfetched or meant for cosmetic purposes. The reason behind it is that a party who wins or loses in litigation has a right to know the reasons behind the decision.
6. The Honourable Magistrate was handling a bill of costs of Kshs 906,132.90 in respect of a decretal sum of Kshs 1,833,920.00. Whereas there is nothing wrong with costs of execution being high as compared to the decretal sum per se, it behoves the judicial officer making such a decision to give a reasoned ruling or at least justify his decision.
7. I have had a look at the bill of costs. The same shows that the statutory fees charged under the *Auctioneers Act* and Rules amount to Kshs 76,178.00. The rest are said to be disbursements which in my view ought to have been proved by way of documentation or otherwise. At this stage I do not wish to say much about the petty cash vouchers attached to the bill. It is not possible to tell which of the disbursements the Magistrate allowed or disallowed and for what reason.
8. In my view, failure to give reasons for the decision is a breach of the principles of transparency and accountability and should not be allowed to stand. That alone convinces me that this appeal is for allowing.
9. The appellant has asked the court to make an order for refund of the amount already paid to the respondent. I do not think that the matter is ripe for such orders. The orders can only be made after the bill is retaxed.
10. In conclusion, the order of the trial court dated 26-01-2023 is hereby set aside. The auctioneer's bill is remitted to the Magistrate Court for a fresh taxation before a Magistrate other than S.O. Temu SPM. The appellant is awarded the costs of this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

