



Kamwalo t/a Step Enterprises Auctioneers v Macharia & 2 others (Civil Miscellaneous Application E282 of 2024) [2025] KEHC 11946 (KLR) (Civ) (18 June 2025) (Ruling)

Neutral citation: [2025] KEHC 11946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E282 OF 2024**

SN MUTUKU, J

JUNE 18, 2025

BETWEEN

**STEPHEN MUTINDA KAMWALO T/A STEP ENTERPRISES
AUCTIONEERS APPLICANT**

AND

ESTHER WANGECHI MACHARIA 1ST RESPONDENT

MUYA MACHARIA DAVID 2ND RESPONDENT

MOSES NJOROGE 3RD RESPONDENT

RULING

1. The Respondents took out a Notice of Motion dated 24th July 2024 against the Applicant seeking to set aside the ex parte proceedings and ruling delivered on 18th July 2024 and to have the Bill of Costs taxed afresh. They claim that the Bill of Costs was not served on them and that the matter proceeded undefended arriving at an uncontested amount of Kshs 55,152; that the ruling is prejudicial to them because they were not afforded the opportunity to contest the Bill of Costs.
2. The Application is opposed by the Mr. Stephen Kamwalo through his Replying Affidavit sworn on 3rd April 2024 in which he has deposed that the Respondents are misleading the court in respect of the taxation of the Bill of Costs whose ruling was delivered on 18th July 2024; that the Bill of costs and Notice of Taxation 19th June 2024 was served on the Respondents as demonstrated on the stamped copy attached to the Replying Affidavit and marked “SMK1”; that the matter was scheduled through CTS for taxation on 27th June 2024 and the new date served on the Respondents physically, which service was acknowledged by stamping as shown on the annexed Affidavit of Service marked “SMK2”; that the Bill was taxed on 27th June 2024 and ruling fixed for delivery on 18th July 2024 which date



was served on the Respondents as shown in the Affidavit of Service marked “SMK3” and that the Respondents did not attend court for the ruling on 18th July 2024 .

3. It is deposed that the Respondents were aware of all the court processes including the ruling of the taxed bill which was communicated to the Respondents through a letter dated 29th October 2024 which has been acknowledged by stamping as shown on that letter. It is deposed that the application lacks merit and ought to be dismissed.
4. This court directed that this application be heard first before the Applicant’s application dated 18th July 2024 in which he seeks judgment against the Respondent for the sum of Kshs 55,152.02 being the amount taxed on 18th July 2024 and certified by the Deputy Registrar as the amount due to the Applicant. He also prays that he be allowed to execute against the Respondent and costs of the Application.
5. On the date slotted for hearing, on 22nd May 2025, the Respondents or their counsel did not attend court to prosecute their application. The Applicant attended. I noted that submissions had not been filed in compliance with court orders. Mr. Kamwalo informed the court that he did not comply with court orders to file submissions because he was waiting to be served with submission by the Respondents which they had not. He asked the court to dismiss the Respondents’ application and allow his application dated 8th January 2025.
6. I have considered the Notice of Motion dated 24th July 2024 and the Replying Affidavit. I have noted that there is a stamp on the affidavits of service exhibited by the Applicant to support his argument that the Respondents were aware of the Court processes and that it is not true as they claim that the bill was taxed without them having been served.
7. The Respondents did not attend court to prosecute their application, nor did they file submissions. Consequently, the Notice of Motion dated 24th July 2024 is hereby dismissed for non-attendance of the Respondents and their counsel and for failure to comply with court order to file submissions.
8. In view of the submission by the Applicant to have his application allowed, I hesitate to do so for the reason that the application listed for hearing was the Respondents’ application and therefore it would be unfair to the Respondents if this court were to allow an application that was not listed for hearing on 22nd May 2025.
9. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 18TH JUNE 2025.

S. N. MUTUKU

JUDGE

