



**Monarch Insurance Company Limited v Oduor t/a Heath Consult Auctioneers Services  
(Miscellaneous Civil Case E012 of 2025) [2025] KEHC 8163 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8163 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CIVIL CASE E012 OF 2025**

**DK KEMEL, J**

**JUNE 13, 2025**

**BETWEEN**

**MONARCH INSURANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**ERICK ERGINE ODUOR T/A HEATH CONSULT AUCTIONEERS  
SERVICES ..... RESPONDENT**

**RULING**

1. The Applicant herein filed the present application dated 10/4/2025 seeking the following reliefs:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That this Honourable court be pleased to set aside the ruling of Hon. Edward Tsimonjero in Ukwala CMM/Misc/E003/2025, Heath Auctioneer vs Monarch Insurance Company made on 27/3/2025 and order for re-assessment of the Auctioneers Bill of Costs before a different taxing master.
  5. That in the alternative, this Honourable court be pleased to set aside the ruling of Hon. Edward Tsimonjero in Ukwala CMM/Misc/E003/2025, Heath Auctioneers vs Monarch Insurance Company and the same be substituted by an order of this court re-assessing the Auctioneer's Bill of Costs afresh.
  6. That this Honourable court be pleased to enlarge the time within which the Applicant may file their objection or appeal against the ruling on the Auctioneer's Bill of costs.
  7. That the costs of this application be awarded to the Applicant.



2. The application is supported by the grounds set out thereunder as well as the supporting affidavit of Sheilah Sakwa, the Senior Legal Officer of the Applicant sworn on even date. The Applicant's gravamen is inter alia; that the Applicant's tools of trade were proclaimed by the Respondent which paralyzed its business operations; that the auctioneer's Bill of Costs was taxed at an exorbitant amount of Kshs239,437.50/= against a decretal sum of Ksh312,564/= which is excessive and an unjustifiable; that the Applicant was never served with any information such as the Notice of Motion Application filed in Ukwala, Notice of Taxation of the Auctioneer's Bill and thus the Applicant was condemned unheard; that the Applicant was only served with the submissions on the matter at Ukwala thereby placing the Applicant at a disadvantage; that the Applicant was also not served with the copy of the ruling on the taxation or certificate of costs; that the taxed bill is excessive, inhabitant and not taxed to scale; that the Respondent and Auctioneer acted in bad faith by exaggerating and inflating the fees; that the Bill of Costs raised glaring discrepancies such as double charging and unexaggerated amounts for items such as travel expenses; that the Auctioneer's actions bypassed lawful procedures; that the Applicant has a meritorious case and that it stands to suffer substantial loss if the orders sought are not granted; that the Applicant was not able to file the Reference within the 7 days provided for under Rule 55 of the Auctioneers Rules 1997 for filing an appeal which lapsed and that the Applicant now prays for enlargement of time to allow the Applicant's Reference be heard on merits; that the Auctioneer's Bill of Cost shows several glaring irregularities and are exorbitant and unjustified, for instance there is a double entry in item 1 for kshs 1,000/= which was doubled to Kshs2,000/=, travelling expenses (item No. 6) claimed a sum of Kshs192, 369.60/= which is excessive and unfounded since the proclamation notice was served through the Judiciary E-filing Portal and that the Auctioneer did not avail evidence of travel to Ukwala Law Courts; that the application has been made without unreasonable delay and raises serious and arguable points of law that merit full consideration by this court; that it is in the interest of justice that the prayers sought be allowed in order to preserve the substratum of the dispute and ensure that the Applicant is not unfairly prejudiced.
3. The application was vehemently opposed by the Respondent who filed a replying affidavit dated 25/4/2025 wherein he averred inter alia; that the application is improperly before the court as it has been filed outside the 7 days provided by Rule 55 of Auctioneer's Rules; that the request to enlarge time to lodge appeal out of time should be rejected because the Applicant deliberately failed to file the appeal within time; that the claim of not being served should be rejected since the Respondent was in communication with the Applicant's Senior Legal Officer (Sheilah Sakwa) and who was served with all the pleadings and documents through her whatsapp number 070812937; that the Applicant had knowledge of the court proceedings in Ukwala Law Courts and that all the pleadings and documents were available on the CTS portal wherein the Applicant was able to access but it simply ignored; that the application should be dismissed.
4. The Applicant's Senior Legal Advisor Sheilah Sakwa filed a further affidavit dated 28/4/2025 wherein she averred inter alia; that the Applicant has sought for a prayer to enlarge time to file the appeal out of time; that this court has inherent discretion to enlarge time for filing a Reference where sufficient cause is shown and where there is need to consider the Applicant's case on merits; that the delay in filing the Reference has been adequately explained namely that the Respondent acted in bad faith when he failed to serve the Applicant with critical documents; that the claim that documents were sent via an alleged WhatsApp number should be rejected as no verification has been presented to show that the number belongs to said Sheilah Sakwa or the Applicant; that the alleged service of the documents electronically has not been backed by relevant evidence; that the claim that the Applicant was served through the CTS portal should be rejected because it is mandatory to effect proper service of documents and therefore the issue of knowledge of documents cannot be a substitute for service; that the Judiciary e-filing system requires formal mapping before a non-party can access case documents; that it was not the duty of



the Applicant to search or scavenge for documents yet it is the legal obligation of the serving party to effect proper and timely service; that the proclamation notice was irregular and unlawful as it was not preceded by the usual or service of a certificate of costs or a court endorsed decree; that the orders obtained by the Respondent were fundamentally flawed and irregular.

5. The application was canvassed by way of written submissions. The Applicant's submissions are dated 28/4/2025 while those of the Respondent are dated 14/5/2025.
6. I have considered the application and the rival affidavits as well as the submissions. It is not in dispute that the Applicant herein is aggrieved by the decision of the taxing master at Ukwala Law Courts dated 27/3/2025. It is also not in dispute that the Applicant did not file the Reference within the stipulated 7 days pursuant to the provisions of Rule 55(5) of the Auctioneers' Rules 1997. It is also not in dispute that the Respondent has proceeded to execute the decree emanating from the decision of the taxing master for his costs. It is also not in dispute that the Applicant if it is desirous of appealing against the decision of the taxing master, it must file its Reference for determination by this court. It is also not in dispute that the Applicant's prayer for extension of time must be weighed against the backdrop of the current status quo wherein the Respondent has commenced execution for the taxed costs. It is also not in dispute that the prayers sought in the Applicant's present application have been drawn in a manner to suggest that the application is a Reference yet the Applicant has not yet filed any since it is seeking for leave to do so. That being the position, this court will deem the application as one seeking for leave to lodge a Reference out of time and for stay of execution of the taxed costs pending the intended Reference. I find the issues for determination are as follows:

- i. Whether the Applicant's request for extension of time to file Reference is merited.
- ii. Whether an order of stay of execution of the costs is merited.

7. As regards the first issue, it is noted that the Applicant seeks to be allowed to file its Reference out of time. Pursuant to the provisions of Rule 55 (5) of the Auctioneer's Rules 1997, a party who is dissatisfied with the decision of a taxing officer is required to file an appeal within 7 days of the decision of the taxing master. The decision of the taxing master was delivered on 27/3/2025 and therefore the Reference ought to have been filed on or before 4<sup>th</sup> April, 2025. The Applicant has approached this court by filing an application on 10<sup>th</sup> April which is six day late. Indeed, the Rules are not cast in stone since the same timelines should not be made to appear absolute as the court is required to consider a broader constitutional imperative so as to ensure that justice is done to the parties. Under Article 159 (2) (d) of the *Constitution* of Kenya, 2010 mandates that justice shall be administered without undue regard to procedural technicalities. Strict adherence to rigid timelines should not defeat substantive justice, especially where sufficient cause has been demonstrated for any delay. Courts are therefore enjoined to apply the law in the manner that promotes access to justice rather than hindering it through technical barriers.

Further, Article 50(1) of the *Constitution* guarantees every person the right to have any dispute resolved in a fair and public hearing before a court. a failure to serve the Appellant with critical pleadings, including the Notice of Motion, the Bill of Costs, and the Ruling, deprived the Appellant of an opportunity to participate in the proceedings and to be heard. Such deprivation offends the fundamental right to a fair hearing and cannot be cured merely by pointed to the lapse of time.

It is settled law that courts possess inherent powers to make such orders as are necessary for the ends of justice or to prevent abuse of the court process. Extending time to enable the Appellant to challenge a decision reached without affording it an opportunity to be heard is both just and necessary to preserve the integrity of the judicial process.



In the present case, the Appellant has explained the delay as arising from the Respondent's failure to effect proper service. The Respondent has not tendered cogent evidence to demonstrate that service was properly effected in accordance with the law. It would be unjust to shut out the Appellant on account of a delay occasioned by the Respondent's own omission.

8. From the averments of the Applicant's Senior Legal Officer, it is clear that the issue of service of the Bill of Costs, Certificate of Costs and the ruling of the lower court were not properly effected on the Applicant. Even though the Respondent has submitted that the Applicant is deemed to have checked the Judiciary's E-filing Portal (CTS) it is common knowledge that non-parties who are coming for the first time, must be mapped in order to enable them file their documents or access documents which are in the portal. It is clear that the Applicant was not aware about the processes taking place at Ukwala Law Courts. The Respondent's assertion that he was in constant communication with the Applicant's Senior Legal Advisor was not backed by irrefutable evidence such as affidavit of service. It is the right of every party in a suit to be served with the requisite pleadings by the adverse party. It is therefore erroneous for the Respondent to propose or suggest that the Applicant ought to have searched the CTS portal and to respond where appropriate. I find this to be unfair as the Applicant is being condemned over circumstances beyond its control yet the Respondent was under legal obligation to ensure that the Applicant was duly and properly served. I find it would be unfair to deny the Applicant an opportunity to contest the taxing master's ruling and to be given an opportunity to ventilate its intended appeal (Reference). I find no prejudice will be occasioned to the Respondent if the Applicant is granted the leave sought to file its Reference out of time. The Respondent's concerns will be taken care of by an award of costs. It is also noted that the Applicant has raised quite some germane reasons why the Bill of Costs that was taxed by the taxing officer should be interfered with. The Applicant has identified several items in the Bill that it feels are not drawn to scale and in accordance with the Auctioneers' Rules 1997. It would therefore be unfair to deny the Applicant an opportunity to contest the said items through the intended Reference.
9. As regards the second issue, it is noted that the Respondent has already commenced execution of the taxed costs. The Applicant has beseeched this court to grant it an order of stay of execution pending the intended Reference. Indeed, if the stay is not granted, the Respondent will proceed to execute the taxed costs and that in the end the Applicant's intended Reference will be rendered nugatory. There is therefore need to grant orders of stay of execution pending determination of the intended Reference. Already, the Respondent has a ruling in his favour and ordinarily is entitled to the fruits of judgment/ruling. The Respondent who is already on the seat of judgement should not be driven out of it without adequate recompense. I find that an order that the Applicant deposits the entire taxed costs in a joint interest earning account in the names of both advocates within a certain timeline will be appropriate as it will take care of the concerns of both parties herein.
10. In the result, I find the Applicant's application dated 10<sup>th</sup> April 2025 has merit. The same is allowed in the following terms:
  - i. The Applicant is granted leave to file and serve its Reference within 7 days from the date hereof.
  - ii. An order of stay of execution of the ruling of Hon. Tsimonjero in Ukwala CMM/Misc/E003/2025 – Heath Auctioneer Vs. Monarch Insurance Company Ltd is hereby granted upon the Applicant depositing the entire taxed costs in a joint interest earning account in the names of both advocates within 14 days from the date hereof failing which the stay shall lapse.
  - iii. The costs of the application shall abide in the intended Reference.

**DATED AND DELIVERED AT SIAYA THIS 13<sup>TH</sup> DAY OF JUNE, 2025.**



**D. KEMEI**

**JUDGE**

In the presence of:

Kisia.....for Applicant

Eric Oduor..... Respondent

Okumu.....Court Assistant

