



**Musyoki t/a Alfajiri Auctioneers v Board of Governors Islamic Teachers Training College
(Miscellaneous Application E357 of 2024) [2025] KEHC 10797 (KLR) (18 July 2025) (Directions)**

Neutral citation: [2025] KEHC 10797 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E357 OF 2024**

**J NGAAH, J
JULY 18, 2025**

BETWEEN

ALBANUS KIOKO MUSYOKI T/A ALFAJIRI AUCTIONEERS APPLICANT

AND

**BOARD OF GOVERNORS ISLAMIC TEACHERS TRAINING
COLLEGE RESPONDENT**

DIRECTIONS

1. By an application dated 28 February 2025, the respondent, which for purposes of this application is the applicant, has sought to strike out the respondent's bill of costs dated 2 December 2024. The applicant has moved this Honourable Court under Order 51 rule 1 of the *Civil Procedure Rules* and section 1A, 2A and 3A of the *Civil Procedure Act*.
2. The dispute is about whether the auctioneer, the applicant in the miscellaneous application, took any step towards execution, apparently of a decree, when such execution had been stayed and, therefore, whether the auctioneer is entitled to any fees that would form a basis for a bill of costs.
3. The auctioneer has, of course, contested the application and has sworn a replying affidavit in that regard.
4. Rule 55 of the *Auctioneers Rules* provides some guidance on the fees payable to auctioneers and, for purposes of this application, the process of determination of any dispute on such fees. It provides 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 subrules (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.

5. I understand this rule to say that, among other things, questions of fees payable or not payable to an auctioneer and the extent to which it is payable, whenever it is due, are questions which under sub-rule (2) and (3) can competently be disposed of by the deputy registrar, a magistrate or the auctioneers board.

6. According to rule 55 (4), it is an appeal from a registrar, a magistrate or the board that lies to the judge in chambers. What is before me is not such an appeal.

7. To the extent that the impugned bill and the instant application to strike it out have been filed in this honourable court, I remit the application to the deputy registrar for disposal. I direct that the matter be mentioned before the learned deputy registrar on 7 August 2025. It is ordered.

SIGNED, DATED AND DELIVERED ON 18 JULY 2025

NGAAH JAIRUS

JUDGE

