



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**MISCELLANEOUS CASE 899 OF 2010**

**JESSE MBURU GITAU t/z GALLANT WORLDWIDE INVESTMENTS FORMALLY  
GALLANT AUCTIONEER.....APPLICANT**

**- VERSUS -**

**HUAWEI TECHNOLOGIES INVESTMENT CO.  
LIMITED.....DEFENDANT**

**RULING**

1. Before the court is a **Notice of Motion** application dated **17<sup>th</sup> September 2010** brought under **Rule 55** of the **Auctioneers Rules, 1997**. It seeks orders that the Auctioneers charges be assessed and that the cost of the application be provided for. The application is premised on the grounds that the Judgement Debtor has neglected to pay the auctioneer's charges despite instructions in form of warrant of attachment and sale having been issued by the High Court and executed by the Auctioneers for the recovery of decretal sum of **Kshs.277,574.00**. The application is supported by affidavit of the Applicant dated **17<sup>th</sup> September 2012**.

2. The application is opposed on several grounds the main ones being that this court has no jurisdiction under **Rule 55** of the **Auctioneers Rules 1997** under which this application is brought, and secondly that the Auctioneers Bill of Costs to be assessed is not even filed in this court and that there is indeed nothing for this court to assess.

3. To address the above issue of jurisdiction, Rule 55 (2) of the Auctioneers Rules 1997 under which the application is premised states that:-

**Rule 55**

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 . . . 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 . . . asses fess payable.”**

The Respondent has submitted that this court has no jurisdiction to assess the auctioneers fees since the suit giving rise to these proceedings was not a High Court suit. It was a CMCC No. 2534 of 2007. Under Rule 55 (2) the High Court has no jurisdiction. This submission, in my view, is correct. The High Court would have jurisdiction under Sub-Rule 2 (b) if the monetary value of the decree or the goods attached would fall within the High Court jurisdiction. In the current application the decretal sum was **Kshs.277,574.00**. One would submit that the monetary jurisdiction of the High Court is unlimited and that in theory this would mean that the High Court can entertain any matter. However Rule 55 Sub Rule (3) is categorical. It says that in any other case where the High Court jurisdictional threshold is not met, the assessment of the auctioneer’s fees can only be assessed by a Magistrate or the Auctioneers Board.

In my view, the Auctioneer Rule intended to make a clear distinction that the High Court cannot entertain assessment of auctioneers costs if the subject matter of the goods attached falls within the monetary jurisdiction of the lower courts. That being so, since the original suit was not in the High court, I am persuaded that this court has no jurisdiction to assess the auctioneer’s fees in this application.

4. A further ground of opposition was that there is no Auctioneer Bill filed in court which this court can assess.

The records show that a photocopy of Auctioneers Bill of Costs dated 17<sup>th</sup> September 2010 is attached to the affidavit in support of the application. It is not filed in court. If it is the document to be assessed, then it is not properly on record and this court cannot consider it. In fact, there is no Bill of Costs on record to be considered by this court.

5. For the foregoing reasons I dismiss the Notice of Motion application dated 17<sup>th</sup> September 2010.

6. The Applicant is however given leave, if he so desires, to file a proper application with a forum that has jurisdiction. Such application must be filed within 7 days from the date of this Ruling.

7. I direct parties to bear own costs of the application.

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2012**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

..... *for the Plaintiff*

.....*for the Defendant*  
*Teresia – Court Clerk*