

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 256 OF 1993

M/S CHEPTEGEN AUCTIONEERS.....PLAINTIFF

VERSUS

JELLA CHUMA OMARI.....DEFENDANT

J U D G M E N T

The appellant herein was a Court Broker detailed to execute warrants of attachment in respect of R.M.C.C. NO. 7866 of 1991 between Aggrey Ochieng & Another -v- Jellah Chuma Omani.

A dispute arose as to the costs incurred by the court broker and so taxation of his bill of costs was ordered by the court. After the taxation a ruling thereon was delivered on 28th June, 1993. The appellant herein was aggrieved by the said ruling and therefore filed this appeal. The memorandum of appeal on record is dated 21st July, 1993. In his ruling the learned trial magistrate observed that the appellant was asking for Kshs. 12,150/-. After analysing the bill of cost he awarded Kshs. 5,000/-. In arriving at the said sum he gave reasons therefor. Above all he observed in passing that while the decretal sum the appellant was supposed to recover was Kshs. 36,844.05, he incurred expenses allegedly amounting to Kshs. 122,150/-. He (the learned trial magistrate) stated that, if the court were to grant that amount of money it would amount to a rip-off. I have taken into consideration the submissions of the appellant in this appeal and the reply by the advocate for the respondent. I am with respect, inclined to agree with the learned trial magistrate and adopt the same reasoning.

Any prudent person and more so a court broker should know that it does not make economic sense to spend about four times above what you are required to recover. Execution of court warrants is not supposed to be punitive to the judgment debtors but are intended to meet the ends of justice. If any court were to agree with the appellant in this case a miscarriage of justice shall result.

The appellant had an option of instituting a civil action against the respondent if he felt he had spent all that money in the course of execution. He will however be faced with the same questions that the learned trial magistrate asked in his ruling.

As regards re-instatement of his court brokers licence. I believe this is not the right forum and this court is not in a position to address the issue in an appeal of this nature.

On my part, I see no merit in the appeal and order that the same be and is hereby dismissed with costs.

Orders accordingly.

Dated and delivered at Nairobi this 27th day of May, 1998.

A. MBOGHOLI MSAGHA

JUDGE