



REPUBLIC OF KENYA



**West Kenya Sugar Company Limited v Shikuku t/a Eshikoni Auctioneers (Civil Miscellaneous Application E022 of 2024) [2025] KEHC 15216 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15216 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL MISCELLANEOUS APPLICATION E022 OF 2024  
S MBUNGI, J  
OCTOBER 22, 2025**

**BETWEEN**

**WEST KENYA SUGAR COMPANY LIMITED ..... APPLICANT**

**AND**

**KENNEDY SHIKUKU T/A ESHIKONI AUCTIONEERS ..... RESPONDENT**

**RULING**

1. By way of Chamber Summons dated 3<sup>rd</sup> March 2024 and filed in court on 5<sup>th</sup> March 2024, the Applicant moved this court under Articles 50 and 159 of *akn ke act 2010 constitution the Constitution* of Kenya, 2010, Sections 1A and 1B of the *akn ke act 1924 3 Civil Procedure Act*, Cap 21, Order 51 of the Civil Procedure Rules, 2010, Rules 55(4) and (5) of the Auctioneers Rules, and the earlier order issued by Hon. Justice Otieno in Kakamega High Court Miscellaneous Civil Case No. E047 of 2022, seeking the following substantive orders:
  - a. That this Honourable Court be pleased to tax afresh the Auctioneer's Bill of Costs dated 10<sup>th</sup> November 2021.
  - b. That the costs of this reference be provided for.
2. The application is premised on the grounds set out on its face and is further supported by the affidavit of Maurice Angara, sworn on 3<sup>rd</sup> March 2024.
3. The Applicant stated that by consent of both parties in High Court Miscellaneous Application No. E047 of 2022, leave was granted to the Applicant to file a formal reference against the Auctioneer's Bill of Costs dated 10<sup>th</sup> November 2021. It is the Applicant's case that the Bill of Costs as taxed by the taxing master was manifestly excessive and disproportionate to the simplicity of the decree in question.



4. In his supporting affidavit, Maurice Angara, counsel for the Applicant, deposed that the taxing master, in his initial ruling, taxed the Auctioneer's Bill of Costs at Kshs. 320,000 =, a sum that the Applicant terms as exorbitant and unjustifiable.
5. He further averred that the said taxation would occasion great injustice to the Applicant and unjustly enrich the Auctioneer, contrary to the principles of proportionality and fairness in costs. That, unless the Bill of Costs is taxed afresh, the Applicant stands to suffer grave prejudice.
6. The parties agreed to canvass the application by way of written submissions. On record are submissions dated 31<sup>st</sup> October 2024 filed by the applicant. At the time of writing this ruling, no submissions by the respondent are in the court file nor on the CTS.

### **Applicant's case.**

7. The Applicant submitted that the central issue for determination is whether the Bill of Costs dated 10 11 2021 should be taxed afresh. They contend that the taxing master committed a manifest error of principle in his ruling, necessitating this court's intervention.
8. The Applicant's case primarily revolves around the taxation of 'item D' of the bill, which pertains to Auctioneer's fees on attachment. The Applicant vehemently opposed this item before the taxing master on three grounds:

That the respondent failed to provide proper proof to ascertain the value of the proclaimed goods; That the goods were never actually attached or sold due to an order for stay of the intended attachment and sale. Consequently, the Respondent was not entitled to the fee for attachment; That even if entitled, the amount claimed was unlawful and unjust as it sought commission based on the value of the proclaimed properties (allegedly Kshs. 12,000,000) as opposed to the decretal sum (Kshs. 240,000).

9. The Applicant averred that the taxing master blatantly ignored these submissions and erroneously stated that the Applicant "did not dispute the value of the proclaimed property," a finding that was contrary to the record. This failure to consider their submissions amounted to bias and occasioned a miscarriage of justice, and they prayed that the entire Bill of Costs should be remitted for fresh taxation.

### **Analysis and Determination**

10. I have carefully considered the application, the supporting affidavit, submissions, and the annexures thereto. The central issue for determination is whether sufficient grounds have been established to warrant the court's interference with the taxing master's decision and to order that the Auctioneer's Bill of Costs dated 10<sup>th</sup> November 2021 be taxed afresh.
11. The law governing references from taxation by a taxing master is provided under Rule 55(4) and (5) of the Auctioneers Rules, which permit an aggrieved party to apply to the High Court for orders to set aside or vary a taxation on grounds of manifest error, misdirection, or application of wrong principles. The court's jurisdiction in such a reference is therefore supervisory, to ensure that the taxing master exercised his discretion judicially.
12. It is trite that the High Court will not ordinarily interfere with the exercise of discretion by a taxing master unless it is demonstrated that the taxing officer erred in principle, took into account irrelevant factors, failed to consider relevant ones, or that the amount awarded is so manifestly excessive or so low as to amount to an injustice. (See *Premchand Raichand Ltd & Another v Quarry Services of East*



Africa Ltd & Another [1972] EA 162 and First American Bank of Kenya Ltd v Shah & Others [2002] 1 EA 64).

13. The Applicant's complaint concerns 'Item D' of the bill, the Auctioneer's fees on attachment, on the basis that no actual attachment occurred and that the Taxing Master erred in adopting the value of the proclaimed goods rather than the decretal sum as the basis for computation. The question before this Court, therefore, is on what basis the auctioneer's fees on attachment should be calculated.
14. The relevant legal framework is found in Part II of the Fourth Schedule to the Auctioneers Rules, 1997, which prescribes the scale of fees chargeable for attachment of movable property.
15. The guiding precedent remains the decision of the Court of Appeal in National Industrial Credit Bank Ltd v S.K. Ndegwa Auctioneer [2005] eKLR, where the Court held that paragraph 4 of Part II of the Fourth Schedule is intended to provide the basis upon which an auctioneer's charges should be assessed. The Court reasoned that it is reasonable for an auctioneer's fees on attachment to be calculated based on the value of the goods actually attached, and not on the decretal sum, since the auctioneer is to be compensated for the actual work performed rather than for what he might have done had he attached goods equal in value to the decree.
16. However, the Court of Appeal's reasoning in the National Industrial Credit Bank Limited case (supra) was premised on the consideration that it would be inequitable to base attachment fees on the decretal amount in situations where the value of the attached goods is significantly lower than the decretal sum.
17. In Julius Mwale T A Mwale Mart Supermarket v Kennedy Shikuku T A Eshikoni Auctioneers, HCMISC App No. E006 of 2023, the learned Justice P.J. Otieno examined this rule in depth and emphasized that applying the proclaimed value in cases where it vastly exceeds the decretal sum would work a clear injustice upon the judgment debtor. The Court held that the value of the attached goods must be considered in light of proportionality, fairness, and the actual work done. The learned Judge stated:

“Where the value of the proclaimed properties is many times above the amount in the decree to be recovered, it is the court's finding that the commission should be assessed based on the decretal sum, and that to use the value of the attached goods would be to enrich the auctioneer unfairly.”
18. Likewise, in Busia Sugar Industry Limited v Kennedy Shikuku T A Eshikoni Auctioneers, HCMISC No. E003 of 2023, Justice R.E. Ougo held that since the purpose of attachment is the execution of a decree, the auctioneer's fees ought to be computed based on the decretal sum rather than the proclaimed value of the goods. The court held thus:

“...The circumstances of this case are different. In this case, the amount in the warrants of attachment was Kshs 291,975 -. Since the purpose of the attachment is the execution of the decree, the applicant's fees should be determined based on the decretal sum rather than the value of the proclaimed goods. Therefore, the taxing master erred by taxing the fees on attachment based on the value of the proclaimed goods, which was Kshs 10,300,000 -...”
19. This Court is persuaded by the reasoning in the above authorities, which represent a sound and consistent application of the principles of equity and proportionality in taxation of auctioneer's costs. Applying those principles to the present case, the Taxing Master's decision to adopt the proclaimed value of Kshs. 12,000,000 =, against the decretal sum of Kshs. 240,000 = was clearly erroneous. Such a valuation offends the equitable principle against unjust enrichment.



20. Consequently, this Court sets aside the ruling of the Taxing Master on the Auctioneer's Bill of Costs dated 10<sup>th</sup> November 2021. It directs that the said Bill be remitted to a different Taxing Officer for fresh taxation, to be conducted in accordance with the principles outlined herein.

### **Disposition**

21. Accordingly, I make the following orders:

- I. The Auctioneer's Bill of Costs dated 10<sup>th</sup> November 2021 and the resultant Certificate of Taxation are hereby set aside.
- II. The said Bill of Costs shall be remitted for fresh taxation before a different taxing master other than the one who made the impugned decision.
- III. Each party to bear its own cost of the application for no party can be blamed for the error.
- IV. Mention on 12.11.2025 before Hon. A.Odawo (PM) for fresh taxation of the bill Directions.

22. Orders accordingly.

23. Right of appeal: 30 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF OCTOBER, 2025.**

**S.MBUNGI**

**JUDGE**

In the presence of:-

CA: Angong'a

Ms Njeri holding brief for Mr. Oluchui for the Applicant present online.

