



**Sudi & 2 others v Kariuki t/a Wiskam Auctioneers; Dries Auctioneers  
(Interested Party) (Environment and Land Miscellaneous Case  
206 of 2019) [2025] KEELC 7736 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7736 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE 206 OF 2019  
CG MBOGO, J  
NOVEMBER 11, 2025**

**BETWEEN**

**DAVID KIPRONO SUDI ..... 1<sup>ST</sup> APPLICANT**

**EUNICE SUDI ..... 2<sup>ND</sup> APPLICANT**

**CHAKA LIMITED ..... 3<sup>RD</sup> APPLICANT**

**AND**

**WILSON KARIUKI T/A WISKAM AUCTIONEERS ..... RESPONDENT**

**AND**

**DRIES AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. Before this court is the chamber summons dated 30<sup>th</sup> April, 2025 filed by the applicants, and it is expressed to be brought under Sections 1B (1) and 3A, 5, 77,78 (a) and (e), (2) of the [Civil Procedure Act](#), Rule 55 of the Auctioneers Rules, and Order 42 Rule 6 (1) of the Civil Procedure Rules seeking the following orders:-
  1. Spent.
  2. Leave be granted to the firm of Ham & Hamsley Advocates to come on record in place of M/s Ndege and Company Advocates.
  3. Leave be granted to the applicant to admit the appeal out of time.
  4. This court be pleased to examine the taxation and the decision of the taxing master Hon. I Barasa, delivered in the proceedings touching on Milimani Misc Appl 206/19 leading to a decision entered on 28<sup>th</sup> February, 2023 and satisfy itself of its correctness and legality thereof.



5. In the meantime, and for avoidance of doubt the warrants of attachment and the resultant decree and/ or order issued on 8<sup>th</sup> April, 2025 be and is hereby stayed.
  6. The DCI Kilimani be compelled to investigate the activities surrounding the matter.
  7. The decree of 21<sup>st</sup> March, 2023 issued in Miscellaneous Case Number 206 of 2019 be and is hereby set aside in its entirety.
  8. Costs be provided for.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of the 2<sup>nd</sup> applicant sworn on even date. The 2<sup>nd</sup> applicant deposed that the decree is incorrectly drawn and the decretal award on taxation costs were not shared for her approval before the signing by the court. Further, she deposed that on 8<sup>th</sup> April, 2025 the auctioneers were instructed to take out warrants of attachment claiming the entire sum of KShs.1,876,000/- for work they did not professionally undertake.
  3. The 2<sup>nd</sup> applicant deposed that the entire taxation award of KShs.1,500,000/- was irrational and high, and that the taxing officer is faulted for relying only on the auctioneer's averments. She deposed that the taxing officer in her ruling delivered on 28<sup>th</sup> February, 2023 misdirected herself and taxed the bill at the said amount, and that the said award was based on a set of undisclosed material information. Further, that the suit in question was unfairly determined, as she was denied an opportunity to defend herself. Further, that the court was not given full disclosure of material facts that would enable a fair determination of the case.
  4. The chamber summons was opposed vide the replying affidavit of the respondent sworn on 9<sup>th</sup> July, 2025. The respondent deposed that the instant application is res judicata as the issues herein have been the subject of a previous application filed by the applicants which was heard and determined. He further deposed that following the execution which arose from a judgment in ELC Case No. 592 of 2010, they filed the auctioneers bill of costs which was duly taxed and certified by the taxing officer on 28<sup>th</sup> February, 2023 at KShs.1,876,300/-. Further, that they obtained a certificate of taxation and proceeded with execution leading to the lawful attachment of the applicant's motor vehicle.
  5. The respondent further deposed that the applicants filed a similar application dated 20<sup>th</sup> April, 2023 seeking similar orders which was dismissed by this court in a ruling delivered on 18<sup>th</sup> May, 2023. That despite the matter having been heard and determined, the applicants have remained evasive in complying with the court orders, thus necessitating the renewal of warrants on multiple occasions. Further, that a similar application was filed in the High Court in Nairobi HCCA No. 672 of 2023 involving the same parties, and the same was dismissed as being res judicata. The respondent urged the court to dismiss the present application, and issue appropriate orders preventing the applicants and their counsel from engaging in further abuse of the court process.
  6. The application was canvassed by way of written submissions. The applicants filed their written submissions dated 21<sup>st</sup> July, 2025 where they raised three issues for determination as listed below: -
    - a. Whether the application is res judicata.
    - b. Whether there has been sufficient reason to explain the delay in filing an appeal.
    - c. Whether this honourable court should examine or otherwise renew, set aside and or substitute the decision of the taxing master.



7. On the first issue, the applicants submitted that an appeal against the decision of the taxing master has never been addressed, and that the instant application is not barred by the doctrine of res judicata. They relied on the case of *Kennedy Mokua Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende* [2022] eKLR.
8. On the second issue, the applicants submitted that the reasons for delay in filing the appeal was caused by the former counsel relocation from Nairobi, and that the counsel now on record has on several occasions misdirected himself on the proper forum and manner of challenging a decision of the taxing master in relation to an award of auctioneer's costs. They urged the court not to visit the mistake of counsel upon an innocent party as it was held in the case of *Edith Nantumbwe Kizito & 3 O'rs v Mariam Kutesa*, CA Civ. Ref No. 98 of 2008. They submitted that the extension of time to file an appeal against an award of the auctioneer's costs is at the discretion of this court exercising its inherent powers to do justice to both parties.
9. On the third issue, the applicants submitted that the respondent never executed the decree, and that instead the eviction was carried out by Michael Ngotho Gitau t/a Leakey Auctioneers who was paid the sum of KShs.287,645/-. Further, that pursuant to Rule 7 of the Auctioneer's Rules, the respondent did not explain why he resorted to billing the decree holder for the eviction of the judgment debtor, and as a result, the decision of the taxing master was improper. They relied on the case of *National Industrial Credit Bank Limited v S. K Ndegwa Auctioneers* [2005] eKLR.
10. The respondent filed his written submissions dated 5<sup>th</sup> September, 2025 where he raised three issues for determination as listed below: -
  - i. Whether the present application is res judicata and an abuse of the court process.
  - ii. Whether the applicants have met the threshold for stay of execution and for leave to file an appeal out of time.
  - iii. Whether the reliefs sought are available to the applicants.
11. On the first issue, and while relying on the case of *John Florence Maritime Services Ltd v Cabinet Secretary for Transport & Infrastructure & 3 Others* [2015] eKLR, the respondent submitted that the parties and the issues in the instant application, and in the application dated 20<sup>th</sup> April, 2023 are similar. They submitted that all these issues arise from the ruling delivered on 28<sup>th</sup> February, 2023 and thus the instant application is res judicata.
12. On the second issue, the respondent submitted that the applicants have failed to demonstrate the substantial loss they are likely to suffer, and that according to the record, they have previously dishonoured cheques and consistently sought to obstruct lawful execution. The respondent submitted that the court cannot be called to exercise its discretion in favour of a party that has approached the court with unclean hands. He relied on the case of *Antoine Ndiaye v African Virtual University* [2015] KEHC 6783 (KLR). Further, he submitted that the applicants have neither explained the delay nor shown sufficient cause, and to allow them to reopen the matter would undermine the principle of finality in litigation. To buttress on this issue, he relied on the case of *Charles Karanja Kiiru v Charles Githinji Muigwa* [2017] KECA 131 (KLR).
13. On the third issue, the respondent submitted that the prayers to set aside the decree and to order investigations by the DCI falls outside the jurisdiction of this court within the present context. Further, that the applicants are improperly invoking judicial process to evade their lawful obligations thus undermining the integrity of the court's orders. Reliance was placed in the cases of *Muchanga*



Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR, and Attahiro v Bagudo 1998 3 NWLL.

14. I have considered the application, and the replying affidavit as well as the written submissions filed by the parties. In my view, there are two issues for determination: -

- i. Whether the instant application is res judicata; and
- ii. Whether the applicants are deserving of the orders sought.

15. The principle of res judicata is provided under Section 7 of the Civil Procedure Act, which provides as follows :-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation. - (1) The expression 'former suit' means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. - (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. - (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. - (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. - (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. - (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

16. From the above, it will be observed that for res judicata to apply, the issue in the latter suit must have been directly and substantially in issue in the former suit, between the same parties, or between parties under whom they are litigating. The Court of Appeal in the case of Uhuru Highway Development Ltd V Central Bank & Others, CA No. 36 of 1996 held that:-

“In order to rely on the defence of res judicata, there must be a previous suit in which the matter was in issue; the parties must have been the same or litigating under the same title; a competent court must have heard the matter in issue and the issue is raised once again in the fresh suit.”

17. In applying stated above to the instant case, the applicants filed the notice of motion dated 20<sup>th</sup> April, 2023 seeking the following orders:-

1. Spent.



2. Leave be granted to the firm of Ham and Hamsley Advocates to come on record for the applicant/defendants in place of Ndege & Company Advocates.
  3. Leave be granted to the applicants/ defendants to file a taxation reference to the Judge of Environment and Land Court in Milimani.
  4. That pending the hearing and determination of this application inter-partes, the warrants of attachment/ sale by the respondents in respect of Toyota Prado KBZ 055K and Mercedes Benz KAM 222V make be and is hereby lifted.
  5. The decree and/or judgment be set aside ex-dibito justitiae.
  6. That pending the hearing and determination of this suit, the suit motor vehicle should be released unconditionally.
  7. That this honourable court be pleased to make such order and or further order(s) it may deem just and necessary in the circumstances.
18. The application was premised on the grounds inter alia that the plaintiff did not carry out the services of eviction, rather the same was conducted by Leaky Auctioneers who were paid their dues, and that there are no written correspondences in court to justify the bill. The applicant contended that the taxed off sum claimed by the plaintiff is astronomical, too high and not easily achievable in law.
  19. The respondent filed his replying affidavit sworn on 5<sup>th</sup> May, 2023. The application was canvassed through written submissions which the parties filed.
  20. In a ruling delivered on 18<sup>th</sup> May, 2023 by Oguttu Mboya, J the court addressed itself on three issues which it considered for determination i.e.
    - i. Whether the subject application is legal tenable in accordance with the provision of Rules 55 of the Auctioneer Rules, 1997.
    - ii. Whether the instant application has been filed by a person seized of the requisite locus standi.
    - iii. Whether the applicants have placed before the court any sufficient cause or basis to warrant exercise of discretion, either as sought or at all.
  21. Looking at the application dated 20<sup>th</sup> April, 2023 and the instant application, it is evident that parties are the same. The prayers sought in the former application and the instant application are similar in terms of the law firm of Ham and Hamsley Advocates seeking to come on record, interrogating and setting aside the ruling delivered by taxing officer on 28<sup>th</sup> February, 2023, and the prayer to admit or allow the appellants to file a reference out of time. I have perused the ruling delivered by Oguttu Mboya, J on 18<sup>th</sup> May, 2023. Paragraphs 21 to 39 of the ruling went at length to discuss the procedure through which a party being dissatisfied with the decision of a taxing officer from a ruling emanating from an auctioneer's bill of costs should follow. Equally so, the third issue for determination also went ahead to discuss in detail the delay in filing the reference. Specifically, paragraphs 66 and 67 provide an explanation why the court was not persuaded to exercise discretion in favour of the applicants.
  22. While submitting that an appeal against the decision of the taxing master has never been addressed and that the instant application is not res judicata, the applicants in their submissions sought to explain the delay in filing the appeal out of time. The court in the said ruling as stated above, expressed itself why it was not persuaded to exercise discretion in favour of the applicants. In fact, while the ruling gave the applicants a hint of the procedure to follow in terms of compliance with Order 9 Rule 9 of the Civil Procedure Rules and Rule 55 of the Auctioneer Rules, the applicants were hellbent in not complying



with the same. With an attempt to hood wink this court by using different terms to seek the court's intervention through its prayers, the applicants cannot lie to this court that the instant application is not res judicata.

23. In my view, the instant application is a total abuse of court process for the reason that a similar application was filed seeking almost similar prayers, and the same was dealt with. Entertaining this application would be a mockery of judicial process and a waste of the court's precious time. Having said so, I find no need to deal with the second issue. It is outrightly clear that the applicants are not deserving of this court's orders. The chamber summons dated 30<sup>th</sup> April, 2025 lacks merit and it is an abuse of the court process. The same is hereby dismissed with costs to the respondent assessed at KShs.150,000/-.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**11/11/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Maina holding brief for Ms. Waliaula for the Respondent

Mr. Kipruto holding brief for Mr. Lagat for the Applicant

