

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
MISC. CIVIL APPLICATION NO. E161 OF 2024

HEZRON GETUMA ONSONGO T/A

HEGEONS AUCTIONEERS.....APPLICANT/APPELLANT

VERSUS

BENSON MWANGI KARIUKI.....RESPONDENT

RULING

1. By an Amended Chamber Summons dated 14th January, 2025 and brought under Rule 55, sub-Rule 4 & 5 of the Auctioneers Rules 1997, Section 22 of the Auctioneers Act, the Applicant seeks the following Orders;-
 - a) *This Court be pleased to set aside the orders of Honourable E. Oboge in Nakuru SCC Misc Civil Suit No. E003 of 2024, made on 5th June, 2024, and order a reassessment of the Auctioneers Bill of Costs before a different taxing master.*
 - b) *The Court be pleased to set aside the aforementioned orders and substitute them with an order for the court to re-assess the auctioneer's Bill of Costs afresh.*
 - c) *The costs of the application be borne by the Respondent.*
2. The application is based on the annexed affidavit of Hezron Getuma Onsongo. In it, he states that he is a licensed Class B auctioneer trading as Hegeons Auctioneers and that on 13th March, 2024, he filed an application in Nakuru SCC Misc. Suit No. E003 of 2024 for assessment of his Bill of Costs.
3. He depones that the Respondent herein filed a Replying Affidavit dated 2nd April, 2024 and upon hearing the matter, the trial Court dismissed his application in its entirety on 5th June, 2024.
4. He argues that the taxing master erred by not taxing the bill of costs despite receiving a letter from the instructing firm authorising the release of a motor

vehicle after the Respondent paid part of the decretal sum. He also claims he was authorised by warrants of attachment to proceed with execution.

5. He asserts that the taxing master erred in not awarding costs of attachment and suit, which were supported by documentary evidence as per Schedule 4 Part II of the Auctioneers Rules 1997.
6. He states that the respondent did not challenge the validity of the application itself, but rather contended that the Applicant failed to prove the bill of costs and was not entitled to the items drawn.
7. His position is that the taxing master's reason for dismissing the application was not cogent enough, particularly regarding the alleged failure to provide a 2024 license.
8. He argues that a court would not have issued warrants of attachment and sale if he did not have a valid license. While attaching a copy of his valid license and warrants as evidence, the Applicant states that he will suffer injustice if the trial court's ruling is not vacated.
9. He urges this Court to set aside the subordinate court's ruling and re-assess the bill itself or order the re-assessment of the bill before a different taxing master.
10. In opposition to the application, the Respondent filed a Replying Affidavit sworn on 11th March, 2025. Giving the history of the case before the small claims court, the Respondent states that the Applicant's application before the Small Claims Court was an Auctioneer's Bill of Costs dated 13th March, 2024, seeking costs for alleged execution proceedings against the Respondent.
11. He states that Hon. Oboge (RM) dismissed the Auctioneer's application on the grounds that the Applicant lacked locus standi to execute the decree and have his Bill of Costs taxed due to his failure to provide the court with his Auctioneer's License and the letter of instructions.
12. Further, he states that if the Applicant was aggrieved by the trial court's decision, he should have appealed on points of law under Section 38 of the

Small Claims Court Act. He termed the current application bad in law and an abuse of the court process because it seeks to re-examine facts rather than appealing on pure points of law.

13. He states that the Applicant is trying to appeal the orders of Hon. Edward Oboge through the back door without filing a Memorandum of Appeal, which is required by Order 42, Rule 1 of the Civil Procedure Rules, 2010. He therefore terms the application incompetent and urges the Court to dismiss it with costs.

Applicant's Submissions

14. He submits that the learned Magistrate/adjudicator erred in law and fact by failing to assess the Bill of Costs as required under Rule 55 sub-rule 3 of the Auctioneers Rules 1997.
15. Further, that he disregarded the submissions on items clearly provided for in Schedule 4 Part II of the Auctioneers Rules 1997 and failed to award costs for items supported by documentary evidence and therefore, the Magistrate/adjudicator erred in law and fact by disregarding the submissions on the said items.
16. In his submissions, the Applicant proceeds to justify specific items in the Bill of Costs, terming reasonable and drawn to scale as per the Fourth Schedule, Part II of the Auctioneers Rules. On Item No. 1 (Instruction Fee), he argues that the sum of Kshs. 1,000 is reasonable and drawn to scale as per Part II (1).
17. He argues that Investigation Fee, on Item No. 2 is necessary for tracing the Respondent's properties and ascertaining ownership to avoid attaching third-party properties, especially because the Applicant's office is in Kericho and the properties were in Nakuru County. It is his position that Paragraph 12 of Part II of Schedule 4 allows the court to increase fees considering the complexity, skill, and labor expended.
18. He argues that Kshs. 4,000/= is claimed as per Part II (3) being Fee before Attachment and therefore, Item No. 3 is drawn to scale. As regards Commiss

ion Fee on Attachment which is the subject of Item No. 4, he states that it is his fee and includes VAT because the attachment was stayed after the judgment debtor was provoked by the proclamation and settled the judgment terms, entitling the Auctioneer to attachment/repossession charges in addition to expenses as per Part II of the Fourth Schedule.

19. He justifies Item No. 5 being Travelling to proclaim as expenses claimed for travelling 66 kms from Kericho to Nakuru and calculated under Paragraph 11, Part II of Schedule 4, which allows travelling expenses published by the Automobile Association up to 3 times to scale (Kshs 65 x 66 kms x 3 x 2 = Kshs. 25,740).
20. In regard to Item No. 6 for Labour and Personnel, he justifies it as expense incurred to inspect and confirm the initial value of proclaimed items (Motor Vehicle, sofa set, fridge, etc.) under Part II of the Fourth Schedule.
21. He terms Kshs. 15,500/= on Item No. 10 a reasonable amount for taking Inventory but argues that the rules give the court discretion to consider a reasonable amount.
22. As for Items Nos. 11-18 being other disbursements, he justifies the same as expenses incurred while in the course of duty, including filing fees, service, and commissioning affidavits.
23. In support of his application, the Applicant cites, among others, the case of *First American Bank of Kenya -vs- Shah & Others (Nairobi Milimani) HC Civil Case No. 2255 of 2000* to affirm the principle that a judge should only interfere with a taxing master's decision if it was based on an error of principle or if the fee awarded was manifestly excessive.
24. He therefore prays for the appeal to be allowed, the ruling set aside, and the Bill of Costs be remitted to a different Magistrate for assessment and determination.

Analysis and determination

25. The Applicant is challenging the decision by the Small Claims Court on 5th June, 2024. A party challenging a Taxing Master's assessment of an

Auctioneer's Bill of Costs must initiate the process through an Appeal commenced by way of a Chamber Summons in line with the established rules of procedure.

26. Under Rule 55(4) and (5) of the Auctioneers Rules, an aggrieved by the Taxing Master's decision, a party can appeal to High Court seeking to set aside or vary the taxation if the Taxing Master has committed a manifest error, misdirection, or applied the wrong legal principles. For emphasis, Rule 55 sub rule 4 and 5 of the Auctioneers Rules provides that;

“(4) An appeal from a decision of a registrar or a magistrate or the Board under sub rules (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.”

27. Further, Section 22 of the Auctioneers Act provides that:-

“(1) A licensed auctioneer making, any sale other than an auction of attached property shall, unless it is otherwise agreed between him and the seller, be entitled to sue for, recover and discharge all sums due in respect of the sale.

(2) A licensed auctioneer making any sale, unless it is otherwise agreed between him and the seller, shall be liable to the due payment to the seller of the net proceeds of all sales of property within fifteen days of the sale.”

28. Indeed, the Appellate Court will not normally intervene in the Taxing Master's exercise of discretion unless it is clearly shown that the taxing officer erred in principle, considered irrelevant factors, failed to consider relevant ones, or if the resulting amount is so excessive or low as to cause a clear injustice as affirmed by ***Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162.***

29. In this case, the Applicant's main prayer is for this Court to either reassess the Bill of costs dated 13th March, 2024 or in the alternative have the Bill of costs re-assessed by another taxing master.
30. However, the impugned Bill of Costs was not taxed. It was dismissed in its entirety primarily on the grounds that the Auctioneer failed to provide a Practicing License and a Letter of Instruction. It thus follows that this Court cannot tax the said Bill. That is the role of a Taxing Master in his original jurisdiction with an appeal to this Court.
31. The Applicant's Chamber Summons does not challenge specific items or amounts within the Bill of Costs, as is typical in a reference. Instead, the challenge centres entirely on the competency of the Auctioneer to practice and the validity of the instructions underpinning the fees claimed.
32. Specifically, it was argued that the Auctioneer failed to provide the Taxing Master with a valid practicing license for the relevant year and the necessary instruction letter for the services rendered.
33. The requirement to hold a valid license is a statutory prerequisite under Section 9 of the Auctioneers Act. An Auctioneer's claim for fees is predicated on the lawful performance of services; without a valid license, the services, and consequently the attendant fee claim, are rendered unlawful and fundamentally invalid.
34. Similarly, the instruction letter is the foundational document that confers authority upon the Auctioneer to perform actions such as proclamation and attachment. Without verifiable evidence of instruction, the Taxing Master lacked a key primary document to affirm that the services were genuinely commissioned, compromising the transparency of the taxation process.
35. Flowing from above, and since the Bill was not taxed by the Taxing Master but dismissed in the circumstances stated herein, the Applicant's prayer seeking to have this Court tax the Bill is untenable. Similarly, the prayer seeking to have the Bill taxed by another Taxing Master when the Bill was never taxed on its merits is untenable.

36. The Chamber Summons herein is a reference and therefore improper. A Reference is meant to challenge taxation of a Bill of costs and not its dismissal.
37. An appeal and a reference are two different terms and processes by which an aggrieved party can approach High Court. The two cannot be used interchangeably.
38. Since the Bill of cost was dismissed on the basis of Auctioneer's competence and the validity of the underlying documents, and not on the merits or amounts of the Bill, the Auctioneer should have properly Appealed on those particular grounds which the Bill of Costs was dismissed and not lodging a reference on the un-taxed Bill of Costs.
39. By filing a Reference instead of an ordinary Appeal to challenge the trial court's decision regarding the Auctioneer's competence, that is, failure to produce a license and instruction letter, the Applicant failed to follow the correct judicial channel for addressing those issues.
40. Consequently, the Court makes the following Orders:-
- 1. The application as filed is not only incompetent but also, without merit and is hereby dismissed.**
 - 2. Due to the nature of this matter, each party is ordered to bear his own costs.**

Dated, signed and delivered at Nakuru this 10th Day of November, 2025.

PATRICIA GICHOHI
JUDGE

In the presence of:

Ms Ng'eno for Applicant/Appellant

Mr. Chege for Respondent

Kamau, Court Assistant

ORIGINAL