

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KILGORIS**

**CIVIL APPEAL NO. E015 OF 2024**

**(CORAM: CHARLES KARIUKI – J**

**ABRAHAM OLE SUKE.....APPLICANT**

**-VERSUS-**

**BENARD-ONKOBA-T/A-BETICO-AUCTIONEERS..... RESPONDENT**

**JUDGMENT**

1. By Application dated 3/9/2024 the Respondent/Auctioneer sought prayers that the Auctioneer's bill of costs attached, assessed, or taxed vide the annexed tabulated Auctioneer's bill of costs. Also sought was the entry of Judgment in terms of the amount taxed thereof.
2. The same was based on grounds on the face of the Application and the supporting affidavit sworn by Bernard Onkoba on 3/3/2024. The Respondent filed a further Affidavit sworn on 17/10/2024. In the Appellant's case, he raised the issue of the correctness of the decretal sum and improper procedure in the execution adopted by the Respondent, which the court ruled could not be canvassed in the instant file but in a substantive file, as the instant file was only for the purposes of an assessment of Auctioneers' costs.

3. The Replying Affidavit in opposition to the Auctioneers' bill of costs had two sets of grounds.

**(1) On the correctness of the Decree issued in Civil Case No. E003 of 2021 between Appellant Herein and Defendant Lekumok Joshua Koipata.**

**(2) The second complaint was the content of the Auctioneers' bill.**

4. As for the issues of Decree and Execution Procedure complaints, this court agrees with the trial court that same could only be canvassed and addressed in No. E003/2021, which spawned the same, and between the parties to the suit.

5. As to the Auctioneer bill of costs, the same was canvassed, and the trial magistrate arrived at his verdict. The Auctioneer's bill of costs, once assessed/taxed, can only be canvassed via the procedure provided by the law. To impugn a decision arising from costs. Assessment by a magistrate: the provisions of the Auctioneer's Act 1996, Rule 55 (4) and (5) of the Auctioneers Rules provide that the same is done via a trial Judge in Chambers from the decision of the magistrate.

6. The Chamber Summons mode of Application must be filed within 7 days of the date of the magistrate's decision. Failure to file within this period without seeking leave of the court for an extension results in the dismissal of the appeal.

7. In the instant appeal, the court emphasizes the importance of strict procedural compliance to reassure parties that legal standards are upheld. It emphasizes that failure to follow the prescribed procedure renders the appeal invalid.

8. Thus, this court finds the instant appeal is fatally defective and thus struck out with no orders as to costs. The Respondent conceded that the appeal was filed out of time, despite having indicated that it was raising a Preliminary Objection, and the court has found sufficient ground to strike out the instant appeal. Thus, the Respondent forfeits the costs of the appeal.

9. Final orders.

**(i) The appeal is defective by dictates of Rule 55 (4) (5) of the Auctioneers Act of 196 Laws of Kenya thus struck out.**

**(ii) The court orders that each party shall bear its own costs.**

**DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS**

**THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

.....

**CHARLES KARIUKI**

**JUDGE**