

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
COMMERCIAL AND TAX DIVISION
MISC APPL NO. E923 OF 2024

BETWEEN

ASHITE CHANDRAKANT PATEL.....1ST
APPELLANT

GRISHMA ASHITE PATEL.....2ND
APPELLANT

BIO CORN PRODUCTS (EPZ) LTD.....3RD
APPELLANT

AND

STEPHEN KARANJA

t/a DALALI TRADERS AUCTIONEERS.....
.....RESPONDENT

RULING

1.Before the court is the appellants' chamber summons dated 3.4.2025 subsequently amended on 19.6.2025. The appeal is brought under **Rule 55 (5) of the Auctioneers Rules, 1997**. It is supported by an affidavit sworn by **Divyeshkumar Idhubai Patel** on 19.6.2025 and written submissions dated 29.8.2025.

2.The appellants seek the setting aside of the portion of the taxing officer's ruling of 21.3.2025 awarding Kshs. 3,333,259.78 in respect of items 6

and 7 of the auctioneer's bill of costs dated 1.10.2024. They also seek substitution of the award in respect of item 6 with a sum not exceeding Kshs. 697,500.00, being the amount expressly claimed in the Auctioneer's Bill of Costs dated 1.10.2024.

3.The applicants seek, in the alternative, item 6 be remitted for fresh taxation before a different taxing officer, to be assessed independently of item 7 in accordance with the applicable legal framework.

4.The respondent opposed the application through a replying affidavit sworn on 30.4.2025 and written submissions dated 13.10.2025.

Appellants' case

5.The appellants' main contention is that the taxing officer erred in principle by merging Item 6 (Nairobi property) and Item 7 (Eldoret property) into a single global award of Kshs. 3,333,259.78. This resulted in an inflated award, beyond the amount pleaded and the statutory cap.

6.They asserted that the Auctioneers Rules require each separate piece of land to be treated as a distinct head of charge.

7.They also asserted that Item 6 was expressly pleaded at Kshs. 697,500.00, which already represented the 50% commission allowed under Rule 7 for stayed sales.

8.The appellants relied on: -

(1) Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR

(2) Kenya Airports Authority v Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment)

(3) Doris Awino Abira v M. I. Wafula & Co. Advocates [2020] KEHC 6491 (KLR)

(4) Co-operative Bank of Kenya Ltd v Jeofrick N. Muinde t/a Kimu Auctioneers [2019] KEHC 1967 (KLR)

(5) Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2006] KEHC 1796 (KLR)

**(6) First American Bank of Kenya Ltd v Shah
& 2 others (Civil Suit 2255 of 2000)
[2002] KEHC 1277 (KLR) (Civ) (25 April
2002) (Ruling)**

Response

9. The respondent opposed the appeal but conceded that the merger of Items 6 and 7 was erroneous. It asserted that the taxing officer erred in principle in the assessment of Items 6 and 7, particularly by relying on a decretal sum despite there being no judgment or decree in the matter.

10. The respondent argued that the taxing officer misdirected herself by treating the matter as execution of a decree, whereas it concerned the exercise of the statutory power of sale over immovable property, and that instruction fees ought to have been based on the value of the property or the amount realized at sale.

11. The respondent further asserted that the taxing officer ignored valuation reports indicating the reserve prices of the properties and instead relied

on letters of instructions which did not specify the reserve prices.

12. The respondent urged the court to re-assess the amounts in items 6 and 7 or remit the bill of costs to a different taxing officer for fresh taxation.

13. The respondent relied on: -

(1) **Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No. 3) [1972]**

EA 162

(2) **First American Bank of Kenya Ltd v Shah & Others [supra]**

(3) **National Industrial Credit Bank Ltd v S.K. Ndegwa Auctioneer [2005] eKLR;** that the

correct yardstick for auctioneer's fees is the value of the property attached, not the decretal sum

(4) **Kenya Pipeline Company Limited v Jovan Kariuki t/a Moran Auctioneers [2021]**

KEHC 367 (KLR)

Analysis and Determination

Enlargement of time

14. The respondent contended that the appeal has been filed out of time.

15. **Rule 55 of the Auctioneer's rules** requires that an appeal, shall be filed within 7 days of the decision of the registrar or magistrate.

16. In the impugned ruling, the taxing officer stated:

- ***"Parties have 14 days right to file a reference."***

17. The impugned decision is dated 21.3.2025. The appeal is dated 3.4.2025. A period of 13 days. It was filed outside the statutory window by 6 days.

18. The appellants argued that the ruling's 14-day notice regularized the filing and that if need be a short nunc pro tunc enlargement can issue.

19. **Articles 159 (2) (d) of the Constitution** requires the court to administer justice without undue regard to procedural technicalities.

20. Bearing in mind the principles for enlargement of time set out in **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR**, I find that the delay in filing the appeal is not inordinate, the respondent has not shown that it would be prejudiced if the time is enlarged. It is in

the interests of justice that the appeal is determined on merit.

21. Accordingly, the appeal is deemed to have been filed in time.

Items 6 and 7

22. The respondent urged the court to re-assess the amounts in items 6 and 7 or remit the bill of costs to a different taxing officer for fresh taxation.

23. The respondent argued that the taxing officer erred by relying on a decretal sum despite there being no judgment or decree in the matter. He contended that the instruction fees ought to have been based on the value of the property or the amount realized at sale.

24. On the other hand, the appellants supported the taxing officer's decision to use the instructions/ decretal amounts as the commission base. They argued that where assessment based on value of property would distort the fees or lead to unfair enrichment, courts are justified in pegging commission on the decretal or instruction sum.

25. The appellants further submitted that the taxing officer expressly declined to peg fees on valuations because the letters of instruction lacked reserve prices and the valuations dated 26.8.2024 (Nairobi property) and 27.8.2024 (Eldoret property) were obtained for purposes of taxation, after the intended sale date of 20.8.2024.

26. The appellants opposed the respondent's proposal to re-open the entire bill due to the failure to file a Rule 55(5) cross reference. The original appeal does not seek re-opening of the entire bill. They underlined that the respondent pleaded item 6 at 697,500.00 and it is bound by its pleading.

27. I have read the impugned ruling. The taxing officer did not peg her determination on the reserve prices in the two valuation reports dated 26.8.2024 and 27.8.2024 because they were issued after the auction scheduled for 20.8.2024. She noted that the respondent issued letters of instructions without reserve prices.

28. The taxing officer pegged the calculation on the decretal sum guided by **Julius Mwale t/a Mwal-Mart Supermarket v Kennedy Shikuku t/a Eshikhoni Auctioneers & another [2023] KEHC 23863 (KLR) (11 October 2023)**

29. The taxing officer found that: -

“...to interpret the value for computation of the auctioneer’s fees on the value of the attached goods would be unjust to the person ultimately obligated to meet such costs. In this particular case where the value of the proclaimed properties was way 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 being Kshs. 306,000/- and that to use the value of the attached goods would be to unfairly enrich the auctioneer... Even if the valuation reports were obtained before the date of the slated sale, the court will still not have pegged its calculation on the valuation report dated 27th August 2024, since the value therein was way too high above the amount that was to be recovered.”

30. In **National Industrial Credit Bank Limited v**

S. K. Ndegwa Auctioneer [supra], the Court of

Appeal observed that: -

“The main object of paragraph 4 is clear. It is intended to provide values on the basis of which the auctioneer’s charges should be assessed. We think that it is reasonable that the auctioneer’s charges for attachment should be based on the value of the goods attached and not on the decretal sum. It is to be remembered that the auctioneer is to be remunerated for the actual work done and not on the basis of what he could have done had he attached goods equivalent in value to the decretal sum. That is the meaning we give to paragraph 4 of Part II of the Fourth Schedule in order to make it operative. We are, however unable to assess the auctioneer’s fees since there is no or not sufficient evidence of the value of the goods attached. We think that, it is appropriate that the fees of Shs.1,000,000/= assessed under Item 4 of the respondent’s schedule of charges should be set aside and the matter remitted to the Deputy Registrar to assess the auctioneer’s fees on the basis of the value of the properties attached.”

31. In **Julius Mwale t/a Mwal-Mart Supermarket**

v Kennedy Shikuku t/a Eshikhoni

Auctioneers & another [supra], P. J. Otieno J.

observed that: -

“While this court is bound by the decision of the court of Appeal, in this matter where the statute is left to interpretation by the court, the court finds that to interpret the value for computation of the auctioneer’s fees on the value of the attached goods would be unjust to the person ultimately obligated to meet such costs. In this particular case where the value of the proclaimed properties was way 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 being Kshs. 306,000/-and that to use the value of the attached goods would be to unfairly enrich the auctioneer.” See also West Kenya Sugar Co. Ltd v Tumbo t/a Dominion Yard Auctioneers [2025] KEHC 14268 (KLR)

32.The respondent faulted the taxing officer for pegging the instruction fees on the decretal sum yet there was no decree. The background to the matter is that the respondent has been instructed to attach two properties situated in Nairobi and Eldoret. The court suspended the public auction

and the appellants were directed to pay the costs of the suspended auction.

33. The taxing officer pegged the calculation of the instruction fees on the amounts sought to be recovered in the letters of instructions to the auctioneer. She took the sum owing as the total figure in the two letters of instruction.

34. The taxing officer took into consideration the costs were for a suspended auction sale; that the value of the property was over and above the amounts owing which the auctioneer was instructed to attach the two properties. The taxing officer also considered that the valuation reports were issued after the aborted auction sale and there was a possibility that they were prepared for the purpose of supporting the bill of costs. Relying on those reports could result in an award that would be unfair to the appellants. Hence, I am not persuaded that there was an error of principle in this regard.

Merger of items 6 and 7

35. The appellants contended that the taxing officer erred in principle by merging Item 6 (Nairobi property) and Item 7 (Eldoret property) into a single global award of Kshs. 3,333,259.78. This resulted in an inflated award, beyond the amount pleaded and the statutory cap.

36. The taxing officer held that: -

“22. The calculation for both item 6 and 7 will thus not be worked out separately. The same will be worked out as follows; since the total is over 3,000,000 then 2% of (302,706,216 + 30,619,761.73) = 6,666,519.55. This amount will then be subjected to 50% since the sale was stayed and/ or postponed. The amount taxed for both item 6 and 7 is thus Kshs. 3,333,259.78/-.”

37. In **Miscellaneous Application No. 95 of 2011**, the late **Justice Majanja** held that: -

“The party and party costs should not simply be taken globally and increased by one-half. The taxing officer must consider each item independently bearing in mind the principles of taxation.”

38.This was cited and upheld in **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR)**

39.I have perused the bill. Under item 6 (Nairobi property), the respondent claimed Kshs. 697,500/-. Under item 7 (Eldoret property), the respondent claimed Kshs. 5,710,000/-.

40.I find that the global award of Kshs. 3,333,259.78 for items 6 and 7 to be irregular because it resulted in the inflation of the fees for item 6 above the pleaded amount. There is therefore a necessity for this court's intervention as the taxing officer failed to consider the principle that items should be considered independently.

Disposal

41.In conclusion, I make the following orders: -

(1)The portion of the taxing officer's ruling of 21.3.2025 awarding Kshs. 3,333,259.78 in respect of items 6 and 7 of the auctioneer's bill of costs dated 1.10.2024 is set aside.

(2) Item 6 & 7 are remitted for fresh taxation before a different taxing officer, to be assessed separately and independently in accordance with the applicable legal framework.

Dated, signed and delivered at Nairobi through Microsoft Teams online application this 12th day March, 2026

F. Gikonyo M

Judge

In the presence of: -

Ms. Migiro for Applicant

Muriungi for Respondent

CA - Ivan/Aggrey