



REPUBLIC OF KENYA



**Zhongao Overseas Construction Engineering Limited v Mwangi
t/a Vintage Auctioneers (Miscellaneous Civil Application
E046 of 2025) [2026] KEHC 3864 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E046 OF 2025**

FN MUCHEMI, J

MARCH 19, 2026

BETWEEN

**ZHONGAO OVERSEAS CONSTRUCTION ENGINEERING
LIMITED APPELLANT**

AND

BRAYAN MWANGI T/A VINTAGE AUCTIONEERS RESPONDENT

RULING

1. The application for determination dated 3rd April 2025 seeks to set aside and reassess the ruling delivered on 1st April 2025 in Thika MCCCmisc/E149/2024 Straight Security Limited & Brayan Mwangi Muthoni vs Zhongao Overseas Construction Engineering C. Limited.
2. The respondent opposed the application through a Replying Affidavit dated 17th April 2025.

The Appellant's case

3. The appellant states that the respondent filed an Auctioneer's Bill of Costs dated 29th August 2024 in which he sought a sum of Kshs. 10,980,168/- as fees for the auctioneer's services rendered to Straight Security Services Limited on account of instructions issued pursuant to Warrants of Attachment dated 3rd July 2022 that sought to execute an irregular decretal sum of Kshs. 115,542,625/-. The appellant further states that the decretal sum of Kshs. 115,542,625/- was irregular because by a judgment delivered on 14th August 2024, the instant court in Civil Appeal No. 110 of 2023 Zhongao Overseas Construction Engineering Limited vs Straight Security Services Limited reversed the findings made in the ruling in Thika CMCC No. 36 of 2013 Straight Security Services Limited vs Zhongao Overseas Construction Engineering Limited on 25th October 2022 which calculated the sum payable as Kshs. 115,542,645/- and replaced the same with Kshs. 3,514,346/-. By the said judgment, the instant court



effectively set aside the warrants of attachment and sale and proclamation notices which purported to execute the decree for an incorrect decretal sum of Kshs. 115,542,645/-.

4. The appellant states that the learned magistrate taxed the respondent's bill of costs in the sum of Kshs. 13,381,750/-. The appellant argues that it is aggrieved with the said taxation as the said amount was not proven by the auctioneer and is therefore manifestly excessive, punitive and grossly exaggerated. Furthermore, the respondent pleaded and prayed for Kshs. 10,180,168.10/-.
5. The appellant argues that the lower court had no pecuniary jurisdiction to tax the auctioneer's bill of costs. The appellant is apprehensive that unless the court stays the execution of the impugned ruling and reviews the decision of the learned magistrate, its constitutional right to protection of property, fair administrative action and a fair hearing will have been curtailed and it will likely be condemned unheard in circumstances in which they have an arguable appeal.
6. The appellant states that it will suffer substantial loss pursuant to the irregular and excessive award of costs issued against it as there is a real and present danger that the auctioneer has no known means of refunding any part of that amount if executed or paid, which if paid will render the appeal nugatory.

The Respondent's Case

7. The respondent states that the storage charges which were accruing and as at 29/10/2024 stand at Kshs. 13,248,744/- were not adequately considered in the ruling. The respondent further states that he is entitled to recover all reasonable expenses incurred during the execution of his duties.
8. The respondent further states that the judgment delivered on 14th August 2024 in Thika High Court Civil Appeal No. 110 of 2023 did not affect his bill as he acted in good faith and in accordance with the courts directive by attaching goods that were nearly sufficient to cover the decretal amount. However the subsequent reduction of the decretal amount was beyond his control as he did not issue the warrants himself. The respondent avers that he filed an affidavit dated 29th October 2024 and asserted that his fees should not be calculated based on the value of the goods and he communicate the same with the creditor, court and judgment debtor regarding the accruing storage charges. However, the High Court did not take into consideration his fees or storage charges.
9. The respondent states that the expenses in his bill of costs are justified and necessary to ensure the proper execution of the court warrants. The respondent further states that he demonstrated to the court the circumstances surrounding the judgment debtor and the challenges encountered during the mobilization and attachment of assets, the accumulation of storage charges and the necessity of employing security. The respondent avers that he was awarded a total of Kshs. 13,381,750.62/- from the filed bill of costs amounting to Kshs. 10,980,168.10/- which difference highlights the ongoing financial implications that have arisen from the judgment debtor's inaction.
10. The respondent states that the judgment debtor had the opportunity to seek stay of execution before the expiry of the proclamation notice issued on 13/6/2022 and thus their failure to act on that opportunity indicates a disregard for the proceedings and they should be held liable for all associated costs that have arisen from the matter.
11. The respondent filed a Further Affidavit dated 5th June 2025 and states that what is for determination before the court is the re-assessment and setting aside of the ruling of the learned magistrate in respect of the Auctioneers Bill of Costs and not a question of the applicable decretal sum on the auctioneers fees towards execution. The respondent argues that the judgment of the High Court Thika HCCA No. 110 of 2023 did not set aside the warrants of attachment and proclamation notices. In any event, the respondent states that the Auctioneers Bill of Costs that was assessed by the learned magistrate



- was in respect of work done by an auctioneer by way of attachment, proclamation and execution in accordance with chargeable fees pursuant to Part II of the Fourth Schedule of the Auctioneers Rules.
12. The respondent states that the Auctioneers fees is not pegged on the decretal sum but rather on a percentage of the value of moveable property attached as per Paragraph 4 of Part II of the Fourth Schedule of the Auctioneer's Rules and thus the High Court decision HCCA No. 110 of 2023 is moot in itself. The respondent further states that warrants mentioning the release orders obtained by the appellant dated 13th may 2025 in Thika CMCC No. 36 of 2013 were conditional and subject to parties herein agreeing on such release terms. The respondent states that as is, parties have yet to agree on any auctioneer costs or charges meanwhile any agreement on the same would be moot at this point given the bill of costs has since been taxed.
 13. The appellant filed a Further Affidavit dated 29th January 2026 and states good faith cannot cure an illegality, validate an irregular or defective execution process, transform excessive attachment or unlawful detention into lawful work done capable of attracting fees or disbursements. The appellant argues that the warrants were irregular in form and defective in substance for want of jurisdiction. The appellant further argues that the Chief Magistrate's Court at Thika has a pecuniary jurisdiction ceiling of Kshs. 20 million pursuant to Section 7(1)(a) of the Magistrate's Court Act and therefore lacked jurisdiction to execute warrants for attachment and sale founded on an alleged decretal sum of Kshs. 115,542,625/-. Accordingly the respondent cannot assert that he merely acted on court warrants where the warrants are void for want of jurisdiction and are patently disproportionate to the lawful decretal sum as the respondent as an officer of the court remains bound to act lawfully and proportionately and within the confines of valid court process. Further a warrant issued without jurisdiction is a nullity and cannot be the foundation of lawful execution or taxation.
 14. The appellant argues that the alleged value of Kshs. 292,600,000/- is speculative, unsupported by any contemporaneous professional valuation and contrived to manufacture an extortionate windfall. The appellant states that a professional valuation summary confirms the actual market value of the proclaimed assets at approximately Kshs. 21.7 million.
 15. The appellant states that the respondent proclaimed and detained 48 units of heavy machinery and motor vehicles on his own alleged valuation placed the same at Kshs. 292,600,000/- to satisfy a debt that was ultimately Kshs. 3,514,346/-. The appellant argues that the same constitutes excessive attachment and a manifest abuse of the execution process; seizing assets worth nearly 80 times the judgment debt and then charging fees on that invented magnitude which demonstrates a motive to manufacture exorbitant fees rather than satisfy a decree.
 16. The appellant states that it paid into court on 15th July 2022 the full decretal sum thus once a debt is secured by payment into court, the purpose of attachment is extinguished and the auctioneer's authority to detain the judgment debtor's goods ceases by operation of law. Thus, the appellant argues that as from 15th July 2022, the respondent had no lawful basis to continue detaining its assets and any continued detention was unlawful and amounted to conversion. The appellant further states that where any custody related expense is alleged to be necessary, the auctioneer's proper course is to promptly seek court supervision and directions and he cannot warehouse a party's assets for years and later present an unbounded figure as a fait accompli.
 17. The appellant argues that the respondent has not exhibited strict proof of the alleged travelling as a lawful and necessary step in execution nor has he exhibited adequate vouchers, receipts or contemporaneous documentation to justify the full claim and in any event any costs incurred after 15th July 2022 are irrecoverable. The appellant further argues that security is not recoverable as a blank figure, it must be strictly proved by contracts, invoices and receipts showing actual payments.



18. The appellant states that an auctioneer has no lien over attached goods, he hold them as custodian for the court and cannot lawfully detain goods as collateral to compel payment of disputed charges. The appellant further states that the respondent's claim of storage fees at Kshs. 17,106,208/- is contradicted by independent investigation demonstrating that the respondent's charged daily rates are exaggerated and unsupported. The investigation by Speed Chase Services reveals that the respondent is charging Kshs. 2,000/- per day for heavy machinery while the prevailing market rate is between Kshs. 500 and 900/-. The appellant argues that storage charges under the Auctioneers Rules are not free market claim at large but they are regulated disbursements and controlled by scale.
19. The appellant states that the ruling on the bill of costs was not sound in law as the tax officer did not demonstrate that she applied her mind to the specific contested items in the bill of costs, the scale provisions applicable to each item, the reasonableness and necessity of each charge, the evidential foundation and strict proof for the alleged expenses and the justification for allowing or disallowing or varying each material item as taxed. Further, the appellant argues that although it lay its objections before the taxing officer, the ruling did not demonstrate how the global figure of Kshs. 3,990,437.60/- for mileage and travelling to proclaim was derived from the pleaded items, the scale and evidence, or how the storage figure of Kshs. 5,782,000/- was arrived at in law in view of the deposit of the undisputed decretal sum into court on 15th July 2022.
20. Parties put in written submissions.

The Appellant's Submissions

21. The appellant submits that the warrants that generated the respondent's instructions proceeded on a decretal sum of Kshs. 115,542,625/- yet the Chief Magistrate's Court's civil pecuniary jurisdiction is capped at Kshs. 20 million under Section 7(1)(a) of the Magistrate's Court Act. Execution founded on a sum beyond jurisdiction is ultra vires and unlawful to the extent of excess and incapable of anchoring execution based fees on the inflated figure. The appellant refers to the cases of Owners of the Motor Vessel "Lillian S" vs Clatex Oil (Kenya) Ltd [1989] eKLR; Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others [2012] eKLR and Kingsway Tyres and Automart Ltd vs Richard Muchai t/a Richard Muchai Auctioneers & Another [2005] eKLR and submits that where a court acts jurisdiction, the resultant process is a nullity and cannot be cured by consent, craft or convenience. Thus, the warrants purporting to execute Kshs. 115,542,625/- were irregular, unlawful and jurisdictionally excessive.
22. The appellant refers to the case of Co-operative Bank of Kenya Ltd vs Jeofrick N. Muinde t/a Kimu Auctioneers [2019] eKLR and submits that a bill must be assessed on the pleaded segments, it is not read and granted as a whole without reasons for each item and the duty to give reasons is not cosmetic but due process. The appellant argues that after citing general propositions, the taxing officer stated that she would assess the bill and proceed to award composite sums including mileage and travelling of Kshs. 3,990,437.60/- and storage charges without identifying the applicable Fourth Schedule item demonstrating the computation, or resolving objections on duplication, statutory caps and strict proof. On the award of Kshs. 3,990,437.60/- for mileage, the Fourth Schedule permits travelling expenses by reference to the Automobile Association (AA) rate (up to three times) but stall demands a demonstrable computation linked to actual journeys, distances, and the applicable scale. A lump sum figure, unmoored from any trip by trip derivation is arbitrary and offends the Fourth Schedule.
23. The appellant refers to the cases of Galaxy Paints Company Ltd vs Falcon Guards Ltd [1999] eKLR and Independent Electoral and Boundaries Commission & Another vs Mule & 3 Others [2014] eKLR and submits that parties are bound by their pleadings and the court determines the dispute as framed. Thus



by returning a taxed sum exceeding what was claimed in the Bill absent amendment or an unexplained lawful basis on the record, the taxing officer exceeded the dispute as framed.

24. The appellant argues that the decision in *National Industrial Credit Bank Ltd vs S. K. Ndegwa* (no citation given) is not a licence for speculative valuation, excessive attachment, or windfall remuneration. Further the appellant refers to the case of *Julius Mwale t/a Mwal-Mart Supermarket vs Kennedy Shikuku* [2023] eKLR and *Westminister Commercial auctioneer vs Diamond Trust Bank Kenya Ltd* [2021] eKLR and submits that in a scenario of over attachment, using the proclaimed value would be unjust. The appellant submits that the respondent proclaimed 48 units of heavy machinery on the speculative proclamation values against what it had always indicated at Kshs. 3.5 million. The appellant argues that the respondent engaged in a fee manufacturing venture attaching property worth 80 times the judgment debt, which is a flagrant abuse of the office of an officer of the court. the appellant submits that in the alternative, if the value of goods approach were to be considered, the valuation report demonstrates that the proclaimed values were speculative and not the true values of the goods attached.
25. The appellant submits that storage is regulated and tightly capped under item 5 of the Fourth Schedule. Further in *Bliss GVS Health Care Ltd vs Consolata Hospital Mathari & 2 Others* (Civil Appeal E049 of 2021) [2025] eKLR the court restated the statutory position that storage is chargeable at 0.25% of the value of the property subject to Kshs. 500/- per day and the court discounts periods where custody ought not to have continued. Thus the award of Kshs. 5,782,000/- for storage is legally untenable and the impugned ruling does not disclose the value basis adopted, the number of chargeable days, how the statutory daily cap was applied or any computation demonstrating compliance with item 5. Thus, the sum is arbitrary and unlawful. The appellant argues that the schedule contemplates reasonable interim expenses incident to lawful attachment however it does not authorise an auctioneer to refuse to release after security or payment and then convert that refusal into years of chargeable storage. To support its contentions, the appellant relies to the cases of *Maji na Ufanisi vs Simon G. Ngomonge t/a Dollar Auctions* [2005] eKLR and *Kingsway Tyres and Automart Ltd vs Richard Muchai t/a Richard Muchai Auctioneers & Another* and submits that its deposit of the secured sum into court on 15th July 2022 extinguished the lawful justification for continued detention of proclaimed goods. Thereafter any custody maintained as leverage for disputed fees was outside the scope of lawful execution and could not generate recoverable storage as an execution expense.
26. The appellant submits that disbursements are not presumed but must be strictly proved. Relying on the case of *Co-operative Bank of Kenya Ltd vs Jeofrick N. Muinde t/a Kimu Auctioneers* (no citation given), the appellant submits that a global award for travel/mileage without identifying trips, distances, applicable scale and derivation is the opposite of judicial taxation. The award of Kshs. 3,990,437.60/- for mileage is an undisclosed and uncomputed global figure, unvouched, uncalculated and untraceable to any AA rate logs and to allow such a massive sum globally without requiring the respondent to produce a single fuel receipt or distance log is to transform the taxation process into a lottery for the auctioneer. The appellant further submits that it is a manifest error of principle to allow disbursements for security mobilization, towing, police or allied expenses in bulk without strict proof by vouchers or contracts. The appellant refers to the case of *Oscar Otieno Odongo t/a Odongo Investment Auctioneers vs Sukari Industries Limited* [2019] KEHC 9116 (KLR) and submits that disbursements are indemnity based reimbursements of actual out of pocket expenses and they are not a supplementary fee.



The Respondent's Submissions.

27. The respondent submits that what is for determination is an appeal by chamber summons of a decision by the trial court on the assessment of the Auctioneers Bill of Costs thus the court's scope of interrogation is limited to the facts and questions whether the magistrate's assessment and award on costs was erroneous in principle as to be high or low to warrant this court's interference. The respondent submits that the court should not be drawn into deliberations concerning the decree and warrants of attachment emanating from Thika CMCC No. 36 of 2013 as the appellant ought to have appealed to have them set aside if it was so aggrieved.
28. The respondent submits that the appellant had earlier in the proceedings sought leave to file a valuation report on the attached property however the applicant duly proceeded to prepare and has annexed in its Further Affidavit an investigation report by Speedchase Services dated 18/9/2025. The respondent prays that the same be struck out as no leave was sought to file the said investigation report and the same is an attempt to sneak in new evidence and further convolute the appellate proceedings. Further, the lower court did not have the benefit of the said report when it rendered its ruling on the bill of costs thus, the annexure consists of new evidence at the appeal stage. Additionally, the introduction of the report encapsulates trial by ambush and further the applicant has failed to comply with Order 42 Rule 27 of the Civil Procedure Rules on the production of additional evidence before the appellate court. Relying on the case of Mahamud vs Mohamad & 3 Others [2018] KESC 62 (KLR), the respondent submits that if the applicant so wished to rely on additional evidence in its appeal, it ought to have availed itself of Order 42 Rule 27 of the Civil Procedure Rules. The respondent thus prays that the said report be expunged from the applicant's further affidavit.
29. The respondent refers to the decisions in Premchand Raichand Ltd & Another vs Quarry Services of East Africa Ltd [1972] EA 162 and St. Elizabeth Academy Karen Limited vs Joseph Gikonyo t/a Garam Investments [2022] KEHC 133 (KLR) and submits that any invitation to address jurisdictional questions of the learned magistrate and warrants of attachment dated 3rd June 2022 would exceed the scope and mandate of the instant court.
30. The respondent submits that it is undisputed that by dint of a decree of the Court in Thika CMCC No. 36 of 2013 warrants of attachment of moveable property was issued and taken out by the auctioneer at the behest of the decree holder for purposes of realization of the fruits on successful litigation. By dint of the said warrants, the auctioneer proceeded to proclaim the applicant's moveable property in execution of the decree, which warrants have never been set aside to date.
31. The respondent argues that the applicant has failed to demonstrate through his appeal that the assessment of Items 1, 2 and 3 of the Auctioneers Bill of Costs were in excess of what is provided in Part II of the Fourth schedule of the Auctioneer Rules. The assessed sums on items 1, 2 and 3 of the bill were within scale as provided in the Schedule. On the assessment of fees of repossession, paragraph 4 of Part II of the Fourth Schedule of the Auctioneer Rules provides that the fees on attachment/repossession is charged at Kshs. 2% for over the sum of Kshs. 1million of which as drafted, presents ambiguity. The respondent relies on the case of National Industrial Credit Bank Limited vs S.K. Ndegwa Auctioneer [2005] KECA 22(KLR) and argues that the learned magistrate appeared to assess her award for fees on repossession on the High Court decision in Thika Civil Appeal No. 110 of 2023 and not the value of the attached property. Thus the respondent argues that the learned magistrate under assessed her award for fees on repossessions and thus he is the one aggrieved and not the applicant. Thus, the respondent argues that the learned magistrate ought to have applied herself to the value of the goods proclaimed and not the decretal sum.



32. The respondent submits that Paragraph 11 of Part II of the Fourth Schedule of the Auctioneer rules provides that travelling expenses as published by the Automobile Association (AA) from time to time shall be allowed at three times the scale. In awarding Kshs. 3,990,437.60/-, the learned magistrate applied herself to the material presented by the auctioneer towards the assessment of his bill of costs and the AA scale 2025 to arrive at the decision she did, thus the award on mileage and travelling to proclaim ought to be sustained.
33. On the storage charges, the respondent submits that it is undisputed that the proclamation of the applicant's moveable property was done and the same duly notified to the applicant vide a letter dated 22nd July 2022 that the items would continue to attract a storage charge of Kshs. 500/- per day in accordance with Paragraph 5 of Part II of the Fourth Schedule of the Auctioneer Rules. Thus, the learned magistrate award was premised on storage charges from the date of attachment until 31st March 2025 until the impugned ruling was delivered on 1st April 2025. Further, the Bill of Costs was filed on 29th August 2024 and the impugned ruling was delivered on 1st April 2025, thus in the intervening period storage charges continued to accrue within the said period thus the learned magistrate was not in error in proceeding to assess the bill in excess of the sum of Kshs. 10,180,168.10/- pleaded.
34. The respondent submits that the question of the applicant's goods being held ransom does not arise as there exists an auctioneer's certificate of costs with respect to work lawfully done on attachment. The said certificate of costs has yet to be set aside whereas despite overtures to the applicant to have the goods released upon deposit in court, of the sum in the certificate of costs, the applicant failed and opted not to avail itself that option. The respondent argues that the applicant actions exemplifies the latin phrase *nemo ex delicto meliorem suam conditionem facere potest*. The applicant is therefore estopped from asserting prejudice arising out of a situation it would have easily assuaged.

Issues for determination

35. The main issues for determination are:
 - a. Whether the Investigation Report by Speedchase Services ought to be expunged from the record.
 - b. Whether the applicant has made out a case for the review or setting aside of the taxing master's assessment.

The Law.

36. Before going to the merits of the appeal, the appellant has raised an issue of jurisdiction of the magistrate court arguing that since the respondent's instructions flowed from warrants of attachment dated 3rd June 2022 which purported to execute what was then treated as a decretal sum of Kshs. 115,542,625/-. It is prudent to mention that what is before this court is an appeal on the assessment of fees emanating from the Auctioneer's Bill of Costs dated 29th August 2024. This court notes that the applicant did file an appeal against the decision of Thika CMCC No. 36 of 2013 vide Thika High Court Civil Appeal No. 110 of 2023 and that is where the applicant ought to have raised the issue of jurisdiction. In the instant case, the court is only confined to the appeal on the bill of costs and not the jurisdiction of the lower court on the main suit.

Whether the investigation report by Speedchase Services ought to be expunged from the record.

37. On perusal of the record, Counsel for the appellant Mr. Akhaabi sought leave on 10th June 2025 to file a Further Affidavit and for valuation of the goods attached by the respondent pursuant to Rule 10 of



the Auctioneer Rules. The court granted the appellant 14 days to conduct a second valuation of the goods in the presence of the respondent. The appellant could not manage to carry out the valuation within the time specified owing to some of its vehicles and machinery was in a different yard than where the other vehicles were. The court on 30th June 2025 extended the time to conduct the valuation to 21 days and directed that the valuation report be filed in court before parties are given time to file their respective documents. On 28th October 2025, Counsel for the appellant informed the court that they had filed their valuation report and sought leave to file their Further Affidavit and submissions. On 4th February 2026, the respondent told the court that although the appellant was granted leave to file a Further Affidavit in regard to the valuation report, they added an investigation report which he was unaware of, was filed without the leave of the court and was contrary to Order 42 Rule 27 of the Civil Procedure Rules. I have perused the record and noted that leave was granted to the appellant to file a Further Affidavit and valuation report. The appellant concealed the issue of an investigation report and further did not seek leave to file it. Furthermore, the investigation report primarily touches on the issue of storage which is a contentious issue in this appeal. The lower court in rendering its ruling did not have an opportunity to look at the report. Thus, admitting the said report would be prejudicial to the respondent who was not aware of the same. It is therefore my considered view that the investigation report by Speedchase Services be expunged from the record.

Whether the applicant has made out a case for review or setting aside of the taxing master's assessment.

38. The law is settled that a court will only interfere with the taxing master's decision where there is an error of principle. In Republic vs Ministry of Agriculture & 2 Others ex parte Muchiri W'njuguna & 6 Others [2006] eKLR it was held:-

The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks that the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other....The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle.

39. In Cooperative Bank Ltd vs Jeofrick Munde t/a Kimu Auctioneers (2019) eKLR the Court held that:-

The assessment of fees is a matter of the Taxing Officer's discretion and this court will not intervene unless there is an error of principle or that the taxing officer took into account irrelevant factors or failed to take into account relevant facts or on the whole amount is inordinately high or low. In this case, the trial magistrate did not set out the basis for assessment or taxation of the costs. In the circumstances, I set aside the award of taxed costs.

40. Similarly in Oscar Otieno Odongo t/a Odongo Investment Auctioneers vs Sukari Industries Limited [2019] KEHC 9116 (KLR) Mrima J. posited as follows on the duty of the High Court in addressing the auctioneer's fees:-

A court dealing with a reference on assessment or taxation of costs must exercise caution since the assessment or taxation is based on exercise of discretion on the part of the assessing or taxing officer. Such assessment or taxation can only be interfered with when it is



demonstrably shown that the decision was based on an error of principle or the fee awarded was manifestly high as to justify an interference.

The Schedule speaks for itself and there is no need to introduce any uncalled for mathematical calculations. The fees are clearly provided for.....

I therefore find and hold that Auctioneer Fees on proclamation must be pegged on the relevant single percentage provided for in Part II of the Fourth Schedule of the Rules and should not be worked through the various bands with different percentages.

41. The applicant is aggrieved by the decision of the learned magistrate in awarding Kshs. 13,381,750.62 whereas the respondent's bill of costs was drawn to the sum of Kshs. 10,980,168.10/-. Further, the applicant faults the learned magistrate for taxing the bill without giving any reasons or justification on the basis for which the amounts were being taxed. I have perused the ruling by the learned magistrate dated 1st April 2025 and noted that the trial court outlined that the bill was to be taxed under Rule 55(1) of the Auctioneer Rules, relied on the decision of National Industrial Credit Bank Limited vs S. K. Ndegwa Auctioneer [2005] and went ahead to tax the bill without giving an explanation under each head. The taxing master never gave reasons why she taxed the items in the bill of costs as she did. Indeed to fail to give reasons in any ruling or judgment threatens or infringes the fundamental requirement of fairness. Reasons must therefore be disclosed. The appellant has sought to have the bill reassessed as this honourable Court deems just. In the interests of saving judicial time, it is my considered view that this court reassess the said bill of costs.
42. It is trite law that auctioneer's fees are chargeable under Part II of the Fourth Schedule to the Act. On scrutiny of the lower court ruling and the Auctioneers Bill of costs, items 1, 2 and 3 of the bill have been taxed to scale.
43. It is not clear whether the taxing master taxed off items 4 on investigation and 5 on hired labour. On Item 4, the respondent annexed an investigator's report dated 6th June 2022 to show that he engaged the services of an investigator. It is therefore my considered view that item 4 is supported and sustainable.
44. Item 6 on mileage in the bill is drawn as Kshs. 562,688/- and item 7 on travelling to proclaim on 13/6/2022 is drawn at Kshs. 5,000/-. In the impugned ruling the taxing master seemed to have calculated both and taxed them at Kshs. 3,990,437.60/-. Paragraph 11 provides for travelling expenses as published by the Automobile Association from time to time shall be allowed at three times the scale.
45. Item 8 on storage, the respondent drew his bill at Kshs. 2,045,160/- and stated that the charges are still accruing. The appellant disputes the said fee and argues that it paid the decretal sum on 15th July 2022 so any detention afterwards by the respondent is unlawful and it should not be condemned to pay. I have perused the ruling by the taxing master and noted that she taxed the storage charges at Kshs. 5,782,000/- (as March 2025) but did not explain how she reached the said sum. Paragraph 5 of Part II of Schedule Four of the Auctioneers Rules provides for storage of property charged at $\frac{1}{4}$ of the value of the property subject to Kshs. 500/ per day. From the record, the goods were proclaimed on 13th June 2022 and storage as per the schedule began on 1st July 2022 with the exception of motor vehicles KG 5728 and KDA 143D which were stored from 2nd July and KCT 95ZZ stored from 6th July 2022 and KBR 995K stored from 8th July 2022. I have further perused the record and noted that as per an order of the lower court dated 13th May 2025, parties were directed that the respondent release the subject motor vehicles and equipment once in agreement on such release. The appellant has not shown this court any agreement between it and the respondent on the release of the motor vehicles. Thus, the said vehicles are still in storage accruing storage fees. The lower court calculated the storage charges until March 2025 but did not explain why. In the interests of justice, this court shall calculate the storage



- fees from the date of storage being 1st July 2022 until 1st April 2025, when the ruling was delivered. Thus, 365 days for 3 years for 15 vehicles at Kshs. 500/- per day equals Kshs. 8,212,500/-.
46. Item 10 on security, the respondent attached a court order dated 27th June 2022 for police assistance. Thus the said item is supported and sustainable.
47. Item 9 on mobilization of heavy equipment, the respondent attached receipts dated 5th July 2022, 1/7/2022 and 2/7/2022 totalling to Kshs. 300,000/-. Thus, the item as drawn is taxed at Kshs. 300,000/-.
48. Item 11 on the auctioneer's fees, the respondent drew the sum as Kshs. 5,852,000/-. The tax master in her ruling taxed of the fees at Kshs. 82,667.02/- being 2% of Kshs. 4,133,351/- having adjusted the costs as per the High Court orders. The law is that if the auctioneer attaches less than the decretal sum then the fees be based on the actual work done. However should he find goods in abundance, he must limit himself to the maximum value of the decretal sum. Thus, the auctioneers are paid for goods recovered subject to the maximum being the decretal sum. it is therefore my considered view that the said item as taxed should not be interfered with.
49. As for item 12 on fuel, the respondent attached receipts amounting to Kshs. 80,000/-. Therefore the item as drawn is taxed at Kshs. 80,000/-. I therefore interfere with the taxing master's decision and tax the bill at Kshs.
50. Consequently, I find that the total taxation as reviewed and re-assessed comes to a total of Ksh.9,818,642 which is hereby substituted with the figure of Ksh.13,381,750 taxed by the magistrate in CM Misc. Application No.E149 of 2024.
51. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF MARCH 2026.

F. MUCHEMI

JUDGE

