



Muli t/a Kithemu Auctioneers v Future Development Corporation Limited (Civil Miscellaneous Application E143 of 2025) [2026] KEHC 4254 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL MISCELLANEOUS APPLICATION E143 OF 2025**

F WANGARI, J

MARCH 5, 2026

BETWEEN

JOHNSTONE KITHEKA MULI T/A KITHEMU AUCTIONEERS .. APPLICANT

AND

FUTURE DEVELOPMENT CORPORATION LIMITED RESPONDENT

RULING

1. The Applicant filed a Notice of Motion application dated 2nd May 2025 pursuant to Section 1A, 1B and 3A of the Civil Procedure Act and Rule 7A, B, C and Rule 55 (1), (2), (3) of the Auctioneers Rules of 1997 and Auctioneers Practice Rules 2009 and Order 51 of the Civil Procedure Rules of Kenya 2010, Section 3A of the Civil Procedure Act, and all other enabling provisions of the law.
2. The Applicant seeks for orders that the Auctioneer's Bill of Costs dated 28th April 2025 be deemed properly filed and the same be assessed by a taxing master, assessed costs be deemed as a decree of the court and the same be paid by the Respondent after assessment.
3. The application is based on grounds that the Applicant, a licensed class 'B' auctioneer trading in the name and style of Kithemu Auctioneers, obtained Warrants of Sale and Attachment from the court dated 25th February 2025 to attach moveable property of the Respondent following a decree that was issued by the court on 20th February 2025. The Applicant stated that they incurred expenses in the process and that the Respondent failed and/or refused to address the issue of costs.
4. The Respondent filed a Replying Affidavit sworn on 17th July 2025 by David Mwenda, the driver employed at the Respondent's company, who denied that the Applicant ever served any proclamation notice upon the Respondent. That the Applicant has furnished the court herein with a cheque of Kshs. 314,977 which was paid by the Respondent as the decretal amount to the claimant which was the full and final settlement of the claim. That the Applicant is therefore not entitled to any costs.



5. The application was canvassed by way of written submissions. The Applicant filed submissions dated 17th August 2025 while the Respondent filed submissions dated 29th January 2026.

Analysis

6. This court has considered the Notice of Motion application dated 2nd May 2025, the Replying Affidavit sworn on 17th July 2025 and submissions by the parties. The issues for consideration are;
- a. whether the application is merited for grant of the orders sought
 - b. who should bear costs.

7. It is not disputed that Warrants of Attachment and Sale dated 25th February 2025 were issued by the court pursuant to a decree. An auctioneer executing court process acts as an officer of the court.

8. Once duly instructed and armed with lawful warrants, an auctioneer is entitled to fees for services rendered in execution of a decree. In *National Industrial Credit Bank Limited v S. K. Ndegwa Auctioneer* [2005] KECA 22 (KLR), the court held that: -

“It is clear from Rule 12 as read with Rule 14 of the Auctioneers Rules and the contents of the prescribed form, that is, Sale Form 2 that the proclamation of the movable goods is legally and effectively an attachment. From the moment the goods are proclaimed, the judgment-debtor is deprived of the legal possession and physical control of the goods and instead the goods are placed in the custody of the law and the court through the auctioneer. The judgment-debtor can only redeem them by the payment of the debt. If the judgment-debtor fails to pay the auctioneer moves to the second stage of conducting the sale of the attached goods.

We are satisfied that the learned Judge correctly construed the word “proclamation” in the context in which it is used in the Auctioneers Rules and reached the correct decision that the auctioneer was entitled to fees for attachment prescribed in paragraph 4 of Part II of the Fourth Schedule.”

9. The Respondent’s contention that no proclamation was served is a matter to be canvassed at taxation. At this stage, this court is concerned with whether the Bill of Costs dated 28th April 2025 is properly before it. The existence of issued warrants is prima facie evidence that execution was initiated lawfully. The Respondent contends that payment of the decretal amount constituted full and final settlement of the claim.
10. This court is however of the view that auctioneer’s fees arise independently from the decree-holder’s claim and are regulated by statute. Under the *Auctioneers Act* and the Auctioneers Rules, an auctioneer who has commenced execution is entitled to charges as prescribed in the Fourth Schedule. This position was emphasized in *National Industrial Credit Bank Limited v S. K. Ndegwa Auctioneer* (supra). Payment of the decretal amount does not automatically extinguish auctioneer’s statutory fees if execution had already commenced.
11. The Respondent’s allegations regarding lack of service and alleged settlement are matters to be ventilated before the Taxing Master. This court cannot determine quantum without taxation. Accordingly, the Bill of Costs is properly referable to the Taxing Master for assessment, where upon taxation, the assessed auctioneer’s fees shall constitute a decree capable of enforcement.
12. On costs, the court exercises its discretion and direct that each party to bear its own costs.



Determination

13. In the upshot, the court orders as follows;

- a. The Applicant's Notice of Motion dated 2nd May 2025 has merit and is allowed.
- b. The file be placed before the DR/ Taxing Master for taxation
- c. Each Party to bear its own costs

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF MARCH, 2026

.....

HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

Ms. Kareji Advocate h/b for Mr. Chamwada Advocate for the Applicant

Mr. Mabende Advocate for the Respondent

Ms. Salwa, Court Assistant

