

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
MISCELLANEOUS CIVIL APPLICATION NO. E067 OF 2025

DASEMY AUCTIONEERS.....APPLICANT

VERSUS

DOUBLE SHASHA LTD.....1ST RESPONDENT

BUSIA COUNTY ASSEMBLY SACCO LTD.....2ND

RESPONDENT

RULING

1. On 10th February 2026, I delivered a ruling herein where I indicated that I was unable to determine the application dated 14th July 2025, as that application arose from a ruling that had been delivered on 9th July 2025, on an application dated 2nd April 2025, yet I did not have a copy of that application before me, to enable me appreciate the objection to the ruling of 9th July 2025. The applicant has since filed a supplementary affidavit, sworn on 17th February 2026, attaching the said application of 2nd April 2025. I believe I am now in a position to determine the said application, dated 14th July 2025, on its merits.
2. The foundation of these proceedings is a suit that was filed at the Busia Small Claims Court, being Busia SCCCOMM/E217/2024, by the 1st respondent herein against the 2nd respondent. The claim was for a sum of Kshs. 909,225.00. A decree was given, against the 2nd respondent, out of those proceedings, dated 25th November 2024, for the sum claimed, of Kshs. 909,225.00, plus a disbursement of

Kshs. 20,000.00, making the total Kshs. 929,225.00. A formal decree in those terms issued, dated 27th November 2024.

3. An application, for execution of that decree, was made, by Ambani & Company, Advocates, to be levied by the applicant herein. That application did not bear a date. Nevertheless, warrants of sale of property in execution of decree were given, on 4th February 2025, addressed to the applicant. A warrant of attachment of movable property in execution of decree for money was also given, dated 4th February 2025, addressed to the applicant herein.
4. Subsequently, orders were granted, on 6th March 2025, to stay execution of the said decree, which, it transpired, had been obtained *ex parte*. The stay of execution was to subsist pending the hearing and determination of an application dated 5th March 2025.
5. That application, dated 5th March 2025, together with another dated 6th March 2025, was the subject of a ruling, that was delivered on 31st March 2025. The ruling set aside the decree of 25th November 2024, and all the consequential orders, including the warrants for attachment and sale, dated 4th February 2025. It transpired that a motor vehicle, registration mark and number KCY 004Z had been attached, on the strength of the warrants of 4th February 2025. That attachment was stayed. Directions were given, regarding how the matter was to be progressed.
6. An order was extracted, from the ruling of 31st March 2025, and issued on 31st March 2025, granting an injunction to

restrain the sale by auction of the said motor vehicle, pending hearing and determination of the suit.

7. That turn of events prompted the applicant herein, as the auctioneer that had been appointed to execute the decree, set out by the ruling of 31st March 2025, to file the Motion, dated 2nd April 2025, seeking leave to have his fees or charges taxed, arising from the work he had done or service rendered in in executing the warrants in question, by attaching the motor vehicle KCY 004Z. He also sought that a bill, annexed to that application, be deemed to have been properly filed. His case was essentially that he had done work, and was entitled to remuneration or compensation for it.
8. A ruling was delivered, on that application of 2nd April 2025, on 9th July 2025. That application was dismissed. The court took the view that the applicant herein was not an interested party in Busia SCCCOMM/E217/2024, to warrant his joinder in the manner that he had proposed in that application.
9. That ruling, of 9th July 2025, is what prompted the initiation of the instant proceedings, by way of the chamber summons, dated 14th July 2025. The High Court is invited to set aside the orders made on 9th July 2025, by the lower court, and to tax the bill that the applicant had filed in the application dated 2nd April 2025, or to remit that bill to the Taxing Officer, for taxation. That is the application that I should be determining.
10. Let me start by stating that an order made by a subordinate court, such as the Small Claims Court, can only

be challenged at the High Court, by way of an appeal, not miscellaneous application. I see that the applicant herein was aggrieved by the order made in Busia SCCCOMM/E217/2004, dismissing his application. He should have filed an appeal, under the Civil Procedure Act, Cap 21, Laws of Kenya, and the Civil Procedure Rules, against that determination.

11. I am aware that the applicant is an auctioneer, and he had premised his application of 14th July 2025, on Rule 55(4) (5) of the Auctioneers Rules. That provision provides for appeals to the High Court, from decisions of magistrates, by way of chamber summons. That is what the applicant appears to have done.

12. However, Rule 55 applies to disputes on taxation of auctioneers' bills of costs. What the trial court was handling, in Busia SCCCOMM/E217/2024, on the application dated 2nd April 2025, was not a taxation of a bill. No bill was taxed, to warrant any appeal being filed here, by way of a chamber summons. The trial court was dealing with joinder of the applicant herein as an interested party, in the dispute in Busia SCCCOMM/E217/2024. The applicant has no interest in the suit in Busia SCCCOMM/E217/2024, except for his fees. However, recovery of his fees does not make him an interested party, to be joined or added as such in those proceedings.

13. What an auctioneer ought to do, where there is a dispute on his fees, is to proceed by way of a miscellaneous application, at the subordinate court, for taxation of his bill of costs, under Rule 55(3). Those proceedings ought to be

separate from those in Busia SCCCOMM/E217/2024, for it would be a dispute separate from that in Busia SCCCOMM/E217/2024, which turns on a debt between the 2 respondents herein. The High Court would have jurisdiction, under Rule 55(4)(5), upon an order being made by the subordinate court, under Rule 55(3). The order, that was made on 9th July 2025, was not founded on Rule 55(3), for it was founded on joinder of parties, rather than taxation of an auctioneer's bill. The High Court would, therefore, have no jurisdiction, in the manner proposed in the instant application.

14. Clearly, the chamber summons, filed herein, dated 14th July 2025, is misconceived. Let the applicant move the magistrate or Board, in terms of Rule 55(3), by way of a miscellaneous application, to have his bill taxed, if there exists a dispute between him and the party that had instructed him to levy the attachment and sale. The application herein is, consequently, dismissed. There shall be no order on costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT MILIMANI, NAIROBI, ON THIS 10TH DAY
OF APRIL 2026.**

**WM MUSYOKA
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.
Mr. Samson Okall, the applicant, in person.**