



REPUBLIC OF KENYA



KENYA LAW
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Haji t/a Almumin High School v Onsongo t/a Hegeons Auctioneers (Appeal E055 of 2024) [2025] KEELRC 383 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 383 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E055 OF 2024
J RIKA, J
FEBRUARY 14, 2025

BETWEEN

ZAINAB HAJI T/A ALMUMIN HIGH SCHOOL APPELLANT

AND

HEZRON GITUMA ONSONGO T/A HEGEONS AUCTIONEERS RESPONDENT

RULING

1. The Appellant filed the Application dated 22nd July 2024.
2. She prays for the following main orders: -
 - [ii]. The Application be deemed to be an Appeal, under Rules 55[3] and [4] of the Auctioneers Rules, and the Applicant is granted leave to lodge the Appeal out of time.
 - [iii]. Interim order of stay of execution, pending hearing and determination of the Appeal.
 - [iv]. The orders of the Hon. Principal Magistrate, in Nakuru Chief Magistrate's Court E&LRC Miscellaneous Application No. 246 of 2023 between the parties herein, made on 12th March 2024, are set aside and the Respondent's Bill of Costs to be reassessed.
 - [v]. In the alternative, this Court sets aside the orders of the Chief Magistrate's Court, and itself, reassesses the Respondent's Bill of Costs.
3. The Appellant relies on her affidavit, sworn on 22nd July 2024. She explains that the Bill of Costs was taxed ex parte, as drawn, on 12th March 2024. She is aggrieved by the orders of taxation.
4. She states that the taxing Court, allowed the Bill of Costs as drawn, without considering that the Bill "had to be reassessed by the Court in arriving at a fair assessment." The amount allowed was too high



and disproportionate. Taxation originated from a matter which is subject of an Appeal, and allowing the Respondent to execute, would amount to “execution upon execution.”

5. The Respondent was on 14th October 2024, 19th November 2024 and 5th December 2024 when the Appeal was last mentioned before the Court, granted more time to file his response and submissions. The Court has not traced that response and submissions in the physical file, at the time of preparing this Ruling.
6. The Appellant filed submissions dated 15th November 2024. Parties agreed that the Application / Appeal is considered and determined, on the strength of their affidavits and submissions.

The Court Finds: -

7. The Appeal / Application is presented under Rule 55 [4] and [5], of the Auctioneers Rules, 1997.
8. Rule 55 [3] mandates a Magistrate or the Auctioneers’ Board to assess Auctioneers’ fees and disbursements.
9. Rule 55 [4] confers on an aggrieved party the right of appeal. The Appeal shall be presented before a Judge in chambers.
10. Rule 55 [5] requires the aggrieved party to file a Memorandum of Appeal by way of Chamber Summons, within 7 days of the assessment.
11. The Appellant states that the assessment of the Respondent’s fees and disbursements, took place on 12th March 2024.
12. She did not file her Appeal within 7 days, as required under the Rules. She filed this Appeal 4 months, after the assessment. The Appeal was filed contrary to the prescribed period of 7 days, under Rule 55[5] of the Auctioneers Rules.
13. The Appellant seeks extension of time among other prayers. Her affidavit does not offer any form of an explanation, for the inordinate delay of 4 months, from the date of the assessment, to the date of filing the Appeal.
14. Her Chamber Summons does not disclose clear grounds of appeal. She does not explain why she was absent from the Court when assessment of the Respondent’s fees and disbursements was carried out. She has not pointed out which item, allowed by the Taxing Master, was not drawn as per schedule. It is not enough to submit in general, that the Bill as taxed was too high and disproportionate. She faults the taxing Court at paragraph 5 of her affidavit, for not considering that the Bill had to “be reassessed.” The taxing Court’s role was to assess the Bill, not to take into consideration that the Bill had to be reassessed.
15. The Application presented by the Appellant is omnibus. In *Muriithi Wanjao & Wanjau Advocates v. Samuel Mundati Gatabaki & Another* [2015] e-KLR and *Silei t/a Leteipa Silei Law Advocates v. Bomet County Public Service Board* [2024] KEELRC 13209 [KLR], the respective Courts held applications which pursue various distinctive orders, under one umbrella, to be inappropriate. Such applications, are incapable of proper adjudication by the Court, for each of the relief sought, apart from being governed by different rules, is also subject to long established and different judicial principles.
16. The Appellant should have staggered her pursuit of various orders, in separate applications. She ought to have first presented her application for extension of time, to open the path to other possible reliefs. She would have afforded herself a fair opportunity of explaining to the Court why there was a delay of 4 months. She would have afforded the Court a fair opportunity, to consider the specific judicial



principles that regulate extension of time, where a party wishes to file an appeal out of the prescribed time. If she succeeded in having extension, she would then have gone into persuading the Court, why the Bill as taxed was too high, and disproportionate. As it is, there is no valid Appeal before the Court, and the orders sought have no merit.

It is ordered: -

- a. The entire Appeal/Application filed by the Appellant is declined.
- b. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 14TH DAY OF FEBRUARY 2025.

JAMES RIKA

JUDGE

