



**Wainaina t/a Seventy Seven Auctioneers v Naivas Company Limited (Miscellaneous Application E001 of 2024) [2025] KEELRC 1197 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1197 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
MISCELLANEOUS APPLICATION E001 OF 2024**

**J RIKA, J**

**APRIL 30, 2025**

**BETWEEN**

**RICHARD WAINAINA T/A SEVENTY SEVEN AUCTIONEERS ... APPLICANT**

**AND**

**NAIVAS COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The Hon. Deputy Registrar of the Court, Margaret Kyalo, made a ruling on an Auctioneer's Bill of Costs, dated 24th September 2024.
2. The Bill was taxed at Kshs. 139,851.
3. The Respondent herein, whose property was the subject matter of proclamation, filed the Chamber Summons Application dated 15th October 2024, seeking review and setting aside of the Ruling on attachment fees.
4. The Respondent submits that there was no attachment of its property by the Auctioneer, and the Deputy Registrar erred, by awarding fees for attachment.
5. The Auctioneer proclaimed the Respondent's goods, on 4th December 2023. Proclamation notified the Respondent to settle the decree within 7 days, to obviate attachment.
6. The Respondent acted promptly, and satisfied the decree in full, before the lapse of the 7 days. There was no attachment.
7. The Respondent proposes that the grant of fees on attachment is set aside. The Respondent relies on the holding in Agricultural Development Corporation v. James Onkundi Omakori t/a Lifewood Auctioneers Limited [2020] e-KLR, that, proclamation is merely an intention to secure the goods, whereas attachment entails actual seizure. The goods must be carried away, from the premises of the Judgment-Debtor, for fees on attachment to be awarded.



8. In response, the Auctioneer's position is that a warrant of attachment was issued by the Court. On 4th December 2023, he proceeded to the Respondent's premises and proclaimed the Respondent's goods. The goods remained under the custody of the law, even though not carried away by the Auctioneer.
9. The Auctioneer similarly filed an Application dated 22nd October 2024, asking the Court to enlarge time for the Auctioneer to lodge his own Appeal against the Deputy Registrar's Ruling.
10. He submits that the Ruling of the Deputy Registrar should be varied and set aside, and attachment fees be reassessed, and allowed as sought under items 6, 8, and 11 of the Bill of Costs.
11. The 2 Applications were consolidated on 26th November 2024. It was agreed the Applications be considered and determined on the strength of the Parties' affidavits and submissions on record.

**The Court Finds: -**

12. There was clearly no legal foundation to award fees on attachment, to the Auctioneers, in the Ruling subject matter of this Application.
13. The warrants of attachment were received by the Respondent on 4th December 2023. The proclamation notice, required the Respondent to satisfy decree, within 7 days.
14. It was only at the expiry of 7 days, that the Respondent's goods could be attached, and attachment fees become payable to the Auctioneers.
15. The Respondent complied with the proclamation notice, satisfied the decree in full, and was thus free from further obligation. There was no attachment fees which could be loaded onto the Respondent, as no attachment actualized.
16. As held in *Agricultural Development Corporation v. James Onkundi Omakori t/a Lifewood Auctioneers* [2020] e-KLR, proclamation is not attachment.
17. If there was a fee for proclamation alone, the Court would have no issue on it being granted to the Auctioneer.
18. The Auctioneer's own Application dated 22nd October 2024, has no merit. It was filed merely to conflate issues, and divert from the main issue in dispute -whether attachment fees was validly awarded. It was filed in reaction to the Application filed by the Respondent, dated 15th October 2024.
19. The Auctioneer invokes Rule 55 [4] of the Auctioneer Rules 1997. The Rule allows a party to file an Appeal before the Judge in Chambers, if not satisfied with the Ruling of the Taxing Officer.
20. He acknowledges that Appeal must be filed within 7 days of the Ruling. The Ruling is dated 24th September 2024, while the Auctioneer filed his Application on 22nd October 2024, about a month after the Ruling.
21. He does not explain delay, and the Court is fair in assuming, that he only filed his Application, intending to obfuscate the real issue. Until he received the Respondent's Application, he had no issue with the Ruling of the Taxing Officer.
22. The Court is satisfied that the Application filed by the Respondent, Naivas Company Limited is merited, and is allowed. The Application filed by the Auctioneer Richard Wainaina, t/a Seventy Seven Auctioneers has no merit and is declined.



**It Is Ordered: -**

- a. The Application by the Auctioneer dated 22nd October 2024 is declined.
- b. The Application by the Respondent, dated 15th October 2025 is allowed, and the order granting the Auctioneer attachment fees, reviewed and aside.
- c. No order on the costs of the Applications.

**DATED, SIGNED, AND DELIVERED ELECTRONICALLY AT NAKURU THIS 30TH DAY OF APRIL 2025.**

**JAMES RIKA**

**JUDGE**

