



Victonell Academy Limited v Kariuki t/a Direct 'O' Auctioneers (Miscellaneous Application E044 of 2024) [2025] KEELRC 1629 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1629 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E044 OF 2024**

**J RIKA, J
MAY 30, 2025**

BETWEEN

VICTONELL ACADEMY LIMITED APPELLANT

AND

**GEOFFREY ISHUA KARIUKI T/A DIRECT 'O'
AUCTIONEERS RESPONDENT**

RULING

1. The Respondent /Auctioneer filed a Bill of Costs against the Appellant, which was taxed at Kshs. 76,349 on 3rd April 2025.
2. The Appellant filed this Appeal on 8th April 2025, through a Chamber Summons , pursuant to Rule 55 [4] and [5] of the *Auctioneer Rules*, 1997.
3. The Appellant states that the Taxing Officer erred, by failing to find that the Appellant was not liable to pay the Respondent's costs.
4. Other Grounds are that the Taxing Officer erred by: awarding items not provided for by the governing law; by failing to halve the awarded costs, sale of the attached goods having been stayed; by taxing the Bill without supporting evidence; and by failing to consider the Response to the Bill.
5. The Appeal is supported by the Affidavit of the Appellant's Manager, James Mbevi, sworn on 10th April 2025.
6. The Respondent filed a Replying Affidavit, sworn by himself on 30th April 2025.
7. His position is that the Appellant did not, in accordance with the law, notify the Taxing Officer, within 14 days of taxation, about the items the Appellant is dissatisfied with.
8. Taxation was in conformity with the 4th Schedule of the *Auctioneers Rules*, 1997.



9. The Application was canvassed orally by the Parties' Counsel, on 2nd May 2025.
10. Mr. Chaungo for the Appellant emphasized that the Appellant was not liable to pay the Respondent's costs.
11. Where sale has not taken place, the Auctioneer can only recover costs from his Instructor. In this dispute, the Instructor was the Decree-Holder.
12. He further submitted that items such as investigation and fees on proclamation were granted. The items are not provided for. Where sale is stayed, the costs awarded must be reduced by half. This was not done.
13. Lastly, the Appellant submits that its Replying Affidavit was not taken into account by the Taxing Officer.
14. Mr. Opar for the Respondent submits that an aggrieved party must give notice to the Taxing Officer of 14 days, before making reference. The Taxing Officer shall give written reasons for his decision on the disputed items. The Appellant did not issue notice to the Taxing Officer.
15. Secondly, the Respondent submits that the contested Bill was filed before the Taxing Officer, pursuant to an order of the Court. The Appellant cannot dispute liability for costs of the auction.
16. In response to Mr. Opar's submissions, Mr. Chaungo clarified that notice to the Taxing Officer is a requirement on reference under paragraph 11 of the Advocates Remuneration Order.
17. Under consideration is an Appeal brought under Rule 55[4] and [5] of the Auctioneers Rules, 1997, not a reference made under the Advocates Remuneration Order.

The Court Finds: -

18. There is a Ruling of the Court [Hon. David Nderitu J], in Nakuru E&LRC Appeal No. E023 of 2023, between Victonell Academy Limited v. Felister Gathoni Mwangi, which stayed execution of decree originating from the Chief Magistrate's Court.
19. At the time, the Appellant's goods had been attached by the Respondent/ Auctioneer herein.
20. Paragraph 33 of the Ruling states that, the Appellant, shall pay Auctioneer's costs for work done, and the same may be agreed, or assessed in the usual manner.
21. The Bill of Costs was filed and taxed against the Appellant, pursuant to this order of the Court.
22. If the Appellant was dissatisfied with the Ruling, it should have appealed to the Court of Appeal, and not seek to challenge liability to pay costs, before a Judge of cognate jurisdiction.
23. The submission by the Appellant that it was not liable to pay Auctioneer's costs is rejected.
24. The Court has not found any requirement under the Auctioneers Rules, for party dissatisfied with taxed items, to issue notice to the Taxing Officer.
25. The Respondent seems to have borrowed this rule from the Advocates Remuneration Order. Before the Court is an Appeal relating to an Auctioneer's Bill of Costs under the Auctioneers Rules, 1997, and not an Advocate's Bill of Costs brought under the Advocates Remuneration Order.
26. The Court agrees with the Appellant that some items which were taxed in favour of the Respondent, are not anchored on the 4th Schedule Part 2, of the Auctioneers Rules, 1997.



27. There is no provision for investigation, which was granted at Kshs. 5,000. There is no provision for fees on proclamation, allowed at Kshs. 4,032.
28. The item pleaded as commission appears to the Court to have been intended to be fees on attachment under paragraph 4 of the 4th Schedule. There is no reason to interfere with the item.
29. The Appellant's submission that the Bill of Costs ought to have been reduced by half, under paragraph 7 of the 4th Schedule, appears to the Court to be flawed. The paragraph refers to half of the fees which the Auctioneer would have been entitled to, after sale and expenses.
30. The Bill of Costs as taxed, is not what the Auctioneer would have been entitled to after sale, but represents what he was entitled to, for work done, as ordered by the Ruling of the Court. The Court does not think there is justification in the Appellant's prayer for slicing the Bill of Costs by half.
31. The submission that there was no proof of the Respondent's VAT compliance was not argued by the parties at taxation and should not be argued on Appeal.
32. In any event, the Respondent's correspondence on record indicates his VAT registration as No. 0xxxxxxP. If there was any doubt about this registration, the Appellant ought to have pursued the issue with KRA and the Auctioneers Licensing Board, and not raise the issue as an appendage to the Appeal on taxation of costs.
33. The Court is persuaded that 2 items - investigation and proclamation - ought not to have been allowed. Other Grounds of Appeal have no support under the 4th Schedule. The 2 items add-up at Kshs. 9,032. The Appellant was found liable to shoulder the Auctioneer's costs through a Ruling of the Court, which was not challenged at the Court of Appeal.
34. The Respondent filed his own Application dated 28th April 2025, asking the Court to adopt the Ruling of the Taxing Officer, as a Judgment of the Court, to enable him recover his costs.
35. The Court does not have any reason to keep that Application pending, having looked at, and dealt with the issues, that would impede recovery of the Auctioneers' costs from the Appellant, as ordered by the Court.
36. The award of Kshs. 74,349.90 to the Respondent by the Taxing Officer, as Auctioneer's costs is reviewed and replaced with an order awarding the Respondent costs at Kshs. 65,317.
37. No order on the costs of this Appeal.
38. Interest granted at court rate from the date of this Ruling.

In sum, it is ordered: -

- a. The Appeal filed through the Chamber Summons dated 10th April 2025 is partly allowed.
- b. The amount allowed on taxation is varied, and costs to the Respondent granted at Kshs. 65,317.90.
- c. Judgment is entered in favour of the Respondent in the sum of Kshs. 65,317.90.
- d. No order on the costs.
- e. Interest granted at court rate, from the date of the Ruling.

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



JAMES RIKA
JUDGE

