



**Dominion Yards Auctioneers v Board of Management Nyangori Boys High School
(Miscellaneous Case E018 of 2025) [2025] KEELRC 1508 (KLR) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1508 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E018 OF 2025**

JK GAKERI, J

MAY 21, 2025

BETWEEN

DOMINION YARDS AUCTIONEERS APPLICANT

AND

**BOARD OF MANAGEMENT NYANGORI BOYS HIGH
SCHOOL RESPONDENT**

JUDGMENT

1. This is an appeal by way of Chamber Summons filed pursuant to the provisions of the Rule 55(3) & (4) of the Auctioneer Rules, 2017 and Part II of the 4th Schedule to the Rules appealing against the ruling by the Deputy Registrar delivered on 12th February, 2025 in KISUMU ELRCC NO. 187 of 20218 Kenya Tertiary and School Workers Union (KETESWO) V The Board of Management Nyang'ori Boys School and Samson Itonde Tumbo ta Dominion Yards Auctioneers, assessing the Auctioneers charges in the sum of Kshs.30,856 be set aside.
2. That the court do find that once goods are proclaimed they become attached and seized by law and the AuctioneerAppellant was entitled to charge his commission under Part II paragraph 4 of the 4th Schedule to the Auctioneer Rules.
3. That the court considers the AuctioneerApplicants Bill of costs and award the sums claimed under items No. 3, 4 and 6 of the Auctioneer's Bill of costs dated 23rd September 2024.
4. In her Ruling delivered on 17th February, 2025, the Deputy Registrar found that the warrants of attachment were signed on 12th May, 2021 and the Order of stay was issued on 20th May, 2021 and taxed the Bill as follows:
 1. Item 4 is taxed off as the court stayed the warrants on 20th May, 2021 before sale commenced.



2. Item 3 is taxed off as stay Orders were granted thereafter secondly, there is no proof that inventory was taken.
3. Item 6 is taxed off as there is no proof of expenditure.
5. This is the Ruling appealed against.
6. The appellant faults the taxing officer on the grounds that she erred in law and fact by:
 - a. Holding that the auctioneer's claim on taking inventory under item No.3 was not payable as stay orders were granted immediately thereafter and there was no proof that an inventory was taken yet the auctioneer served the proclamations upon the respondent on 13th May, 2021 including the specific properties, their condition and estimated value.
 - b. Holding that the auctioneer's commission under item 4 was not payable as the court stayed the warrant before the sale commenced yet commission is earned from the proclamation.
 - c. Failing to hold that goods become attached by law the moment they are proclaimed and the auctioneer is entitled to the payment of commissionfee under the Rules.
 - d. Failing to award the auctioneer his commission under part II paragraph 4 of the 4th Schedule to the Act.
 - e. Holding that the claim for travelling under item 6 was not payable yet the auctioneer use his personal vehicle to serve the proclamation on 13th May, 2021, to and from Kisumu to Bungoma.

Appellants submissions.

7. As to whether the AuctioneerAppellant was entitled to charge fees on taking of inventory, it was submitted that the appellant served 6 copies of the proclamation upon the respondents on 13th May, 2021 in six warrants issued in the matter and the court granted stay orders on 20th May, 2021 and cited Rule 12 of the Auctioneer's Rules to urge that since issuing of proclamation is mandatory, the auctioneer is bound to take inventory by listing the goods in the proclamation form indicating the condition and estimated value. That that is what is known as "taking inventory".
8. That the auctioneer filed the proclamation in court on 18th May, 2021 and were available in the court file to justify award of item No. 3 of the Bill of costs, urging that the Appellant took inventory of the respondent's goods in six (6) separate proclamations and was entitled to a reasonable sum under this item.
9. As to whether the appellant was entitled to charge fees on service of the proclamation, it was submitted that service of proclamation (attachment) is the first step in the process of execution of warrants of attachment and on service of the proclamation, the goods become attached by law and attachment is complete as held by Kasango J. in *George Gikubu Mbuthia V Peter Njeru Mugo & 3 Others* [2005] eKLR, to submit that attachment is complete on proclamation.
10. Reliance was also placed on the decisions in *National Industrial Credit Bank Ltd V Majani Mingi Sisal Estate HCCC No. 1818 of 2020* and the Court of Appeal decision in *National Industrial Credit Bank Ltd V S. K. Ndegwa Auctioneer, Appeal No. 195 of 2004*, to urge that the auctioneer was entitled to fees for attachment under paragraph 4 of Part II of the 4th schedule to the Rules.
11. As to whether the appellant was entitled to charge fees on travelling the appellant submitted that Bungoma town is 92 Kilometers away from the respondent's school, to urge since the journey



starts from the auctioneer's office, travelling fee is merited as held in Oscar Otieno Odongo ta Odongo Investment Auctioneers V Sukari Industries Ltd, Misc. Civil Appeal No. 293 of 2018 that proclamation begins from the auctioneer's office.

12. That the taxing officer taxed off the entire sum under item 6 on travelling expenses.
13. The appellant submitted that since it served the proclamation upon the respondent, it confirmed travelling from Kisumu to Bungoma a distance of 98 kilometers using motor vehicle Registration Number KCQ 7X7C.
14. Reliance was made on the sentiments of the court in National Industrial Credit Bank Ltd V Majani Mingi Sisal Estate (supra) on evidence of travelling, to urge that it was entitled to Kshs.43,041 for travelling.
15. Finally, the appellant submitted that it was entitled to the sums claimed under the different items of the Bill of Costs.
16. The respondent did not file submissions.

Analysis and determination.

17. Being a first appeal, the court is guided by the sentiments of the Court of Appeal in *Selle & another V Motor Boat Co. Ltd* [1968] CA 123 and *Peters V Sunday Post* [1958] EA 424 on the role of the first appellate court which is reconsider and re-evaluate the evidence on record and make its own conclusions bearing in mind that it has neither seen nor heard the witness and thus make due allowance.
18. The appeal is uncontested.
19. After the judgment in Kisumu ELRC CAUSE No. 187 of 2018 was delivered in favour of the claimant with costs, the claimant lodged a Bill of costs dated 23rd September, 2020 and the Taxing Officer taxed it at Kshs.33,110.00 having found that the union was represented by an unqualified person under Section 40 of the *Advocates Act*, and was therefore not entitled to instruction fees of Kshs.300,000.00.
20. The Record of Appeal reveals that Appellant proclaimed the respondent's goods on 13th May, 2021 having received instructions on 12th May, 2021.
21. The proclamation listed four (4) items namely; Buses Registration Numbers KCP 1X2 K and KBR 9X3U, Isuzu, the condition, indicated as old and estimated value Kshs.700,000 and 500,000 respectively, assorted school furniture (old) Kshs.300,000 and assorted school stationery Kshs.200,000, together with any other movable properties of the respondent on collection day, 100 computers at Kshs.5,000, Kshs.500,000.00 assorted computer sets (old) Kshs.200,000, assorted school furniture Kshs.800,000.00.
22. As regards charging of fees on taking inventory, Paragraph 4 of Part II of the 4th Schedule to the Auctioneer Rules provides that:
 - Fees on attachmentrepossessiondistrain and expenses
 - Kshs.4001 to Kshs.100,000 10%
 - Kshs.400,001 to Kshs.1,000,00 5%
 - Over Kshs.1,000,00.00 2%
23. Rule 12 of the Auctioneer Rules, 2017 provides:



- (1) Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock-
 - (a) record the court warrant or letter of instruction in the register;
 - (b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;
 - (c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;
24. The principles that govern the charging of fees by an auctioneer are fairly well settled in a catena of decisions of the court of Appeal and the High Court.
25. In *National Industrial Credit Bank Ltd V S.K Ndegwa Auctioneers (supra)*, the Court of Appeal stated as follows:

...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 on attachment prescribed in paragraph 4 of Part II of the Fourth Schedule.

...We think that it is reasonable that the auctioneer’s charges for attachment should be based on the value of the goods attached and not on the decretal sum. It is to be remembered that the auctioneer is to be remunerated for the actual work done and not on the basis of what he could have done had he attached goods equivalent in value to the decretal sum.”
26. In this case, the value of the goods attached was estimated at Kshs.1,900,000.00.
27. However, the auctioneer did not comply with the provisions of Rule 12(1)(b) of the Auctioneer’s Rules which mandatorily require that the proclamation must indicate the value of specific items and “condition of each item”.
28. In all the 6 proclamations, furniture was described as “Assorted School Furniture” and accorded a value of Kshs.300,000.
29. Details such as number of chairs, desks and value was missing and the same applied to “assorted school stationery Kshs.200,000 or Kshs.300,000. Were they printing papers, writing books, foolscaps and how many reams.
30. Computers too were described as assorted computers “old” save in one proclamation where the number was indicated as 100 at Kshs.5,000 a piece.
31. In the court’s view, the appellant’s proclamation was not prepared in accordance with Rule 12(1)(b) of the Auctioneers Rules save for the two (2) Isuzu buses.
32. Registration Number KCP 1X2K and KBR 942U.
33. In the courts view, the correct estimate of the goods proclaimed is Kshs.1,200,000 for the two buses estimated at Kshs.700,000 and Kshs.500,000 respectively.



34. As correctly submitted by the appellant, attachment is complete on proclamation as provided for by Rule 14 of the Auctioneer rules that:

No person shall remove, alter, damage, substitute or alienate any goods comprised in the proclamation until they are redeemed by payment in full of the amount in the court warrant or letter of instruction or such lesser amount in the court warrant of letter of instruction or such lesser amount as the creditor or his advocate shall agree in writing.

35. The foregoing is fortified by the holding of the Court of Appeal in *National Industrial Credit Bank Ltd V S. K. Ndegwa Auctioneers (supra)* as follows:

...One has to consider the essence and purpose of the attachment. The purpose of the attachment is the execution of the decree. The essence of attachment is to remove the goods from the possession of the Judgment debtor and place them in the custody of the law so that they can be sold to satisfy the Judgment debt if the Judgment debtor does not pay the debt...”

36. It is clear from Rule 12 as read with Rule 14 of the Auctioneer Rules and contents of the prescribed form that is Sale Form 2 that proclamation of 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.

37. 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.

38. In the instant case, the appellant proclaimed the goods on 13th May, 2021 and the proclamation was received by Mr.Ibrahim Buramu, the Principal of the respondent school but who declined to sign the same and rubber stamp it, and the proclamation was filed in court on 18th May, 2021. However, the proclamation was stayed by the court on 20th May, 2021.

39. As held by the Court of Appeal in *National Industrial Credit Bank Ltd V S. K. Ndegwa Auctioneer (Supra)*, the court is satisfied that the appellant was entitled to fees for attachment as prescribed in paragraph 4 of Part II of the Fourth Schedule.

40. In the court’s view, the Taxing Officer fell into error on the finding that the stay disentitled the auctioneer fees.

41. However, analogous to the finding of the Taxing Officer, the court is not persuaded that an actual inventory was taken. This is discernible from the generalized nature of the proclamations save for 2 items, the two buses.

42. The appellant adduced no evidence before the Taxing Officer to show who conducted the inventory and when.

43. As adverted to elsewhere in this Judgment, the absence of essential figures betrays the claim for taking inventory, including the types of furniture such as cabinets, book shelves, desks, tables and chairs for instance.

44. The charge of Kshs.30,000 was not merited.

45. Concerning travelling expenses, the appellant contended that it is based Bungoma town 92 kilometers away from the respondent school and used its motor vehicle to make the return journey on 13th May, 2021.



46. The taxing officer declined this item on the ground that there was no proof that the amount claimed was expended and other providing the registration number of a motor vehicle the appellant did not avail verifiable evidence of having used the motor vehicle on 13th May, 2021.
47. However, granted that the proclamation was presented to the respondent's Principal on 13th May, 2025 at 3:49pm, by Samson I. Jumbo in the presence of one W. Wanyama who signed against his name, there is credible evidence of Mr. Samson I. Tumbo having travelled to Nyangori Boys High School in Vihiga along the Kakamega Kisumu highway, a distance of about 94 kilometers the appellant is entitled to reasonable travelling expenses and in the court's view, the amount claimant ought to be based on the actual distance covered.
48. In determining this appeal, the court is guided by settled principles of law as regards interference with the exercise of discretion by the Taxing Officer as expressed in Oscar Otieno Odongo ta Odongo Investment Auctioneers (*supra*) as follows:
- A court dealing with a reference on assessment or taxation of costs must exercise caution since the assessment or taxation is based on exercise of discretion on the part of the assessing or taxing officer.
49. Such assessment or taxation can only be interfered with when it is demonstrable that the decision was based on an error of principle or the fee awarded was manifestly high as to justify an interference".
50. In Kennedy Shikuku ta Exhikhoni Auctioneers V Nzoia Sugar Company Ltd [2022] KEHC 10361 (KLR) Riechi J stated as follows:
- It is also settled law that matters of assessment of an Auctioneer's Bill are a provision of the *Auctioneers Act 1977* and the Rules made there under, the court need not look further. The Rules and schedules thereto are self-governing".
51. Having found that the appellant was entitled to fees for the proclamation dated 12th May, 2021 as well as reasonable transport costs from Bungoma to Nyangori Boys High School and back, the court is satisfied that he appellant has made a case for interference with the exercise of discretion by the taxing officer.
52. Consequently, the appeal is partially successful.
- a. The decision of the taxing office on items 4 and 6 of the Appellant's Bill of costs dated on 23rd September, 2024 is set aside; and
 - b. The two (2) items of the Bill of costs be assessed by a different taxing officer.
 - c. Parties shall bear own costs of this appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 21ST DAY OF MAY, 2025.

DR. JACOB GAKERI

JUDGE

