



Muthee t/a Compliance Auctioneers v Hashi Hauliers Limited (Miscellaneous Application E175 of 2024) [2025] KEELRC 1643 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1643 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E175 OF 2024**

CN BAARI, J

JUNE 5, 2025

BETWEEN

FW MUTHEE T/A COMPLIANCE AUCTIONEERS APPLICANT

AND

HASHI HAULIERS LIMITED RESPONDENT

RULING

1. This ruling relates to a reference brought pursuant to Rule 55 (4) & (5) of the Auctioneers Rules. The Applicant seeks the following reliefs:-
 - i. That the decision of the Learned Deputy Registrar delivered on 13th August, 2024 on the Applicant's Bill of costs dated 13th June, 2024 be set aside, and this Court does tax the Applicants' bill of cost as drawn.
 - ii. That in the alternative to prayer (i) above, the Learned Deputy Registrar or any other Deputy Registrar be directed to re-evaluate her decision and tax the Applicants' Bill of costs.
 - iii. That the costs of this reference be provided for.
2. The application is supported by the grounds on its face and the affidavit sworn by the Applicant on 14th August, 2024. The Applicant states that the Learned Deputy Registrar acted without jurisdiction in dismissing the bill of cost as her jurisdiction was limited to assessing the amounts payable.
3. The Applicant further avers that the Learned Deputy Registrar erred and applied the wrong principles in her application of the Auctioneers Rules, and holding that the Respondent paid the decretal amount before the Auctioneer had proclaimed as against the Respondent.
4. The Applicant avers that the Learned Deputy Registrar misapprehended the consent recorded on 27th September, 2022 in Nairobi ELRC No. 1337 of 2015 Anthony Kihumba Githaiga Vs Hashi Hauliers



Ltd by holding that the Auctioneer should not have proceeded to apply for warrants of attachment, yet the decretal amount had by then not been paid.

5. The Respondent opposed the reference vide a Replying affidavit sworn on 6th February, 2024 by one Michael Aluoch, the Managing Director of the Respondent.
6. The Respondent avers that the decision to dismiss the Applicant's Bill of Costs was not based on any error in principle, as the Deputy Registrar took into account relevant factors relating to the said Bill which included the fact that parties had filed a consent and payment made towards settlement as per the said consent. It avers that the DR in her Ruling exercised her discretion judiciously in that the Bill of Costs had been filed in bad faith as the subject matter was settled by consent.
7. The Respondent states that it would have been wrong for the DR to tax the Bill as no valid cause of action existed. That the Bill of Costs was indeed illogical especially considering that a cheque had already been dispatched by consent of the parties, and as such, the decision to dismiss the Bill was justified.
8. It is the Respondent's assertion that the contention by the Applicant that the Deputy Registrar did not have powers to dismiss the bill and ought to have placed it before the judge, is a misapprehension of the law and that the Deputy Registrar's jurisdiction as a taxing officer has power, which include to tax the Bill, reject the Bill or strike it out altogether.
9. It avers that there was no basis for the Applicant Auctioneers to seek the alleged warrants of attachment in the matter as the Respondent had already made full payment to the Claimant's Advocates, a fact which they were well aware as well as their instructing Advocates, and such course of action was irregular and predatory.
10. The Respondent states that the payment of the sum of Kshs.315,932.80/- to the Claimant was not as result of any recovery measures taken by the Applicant, but that it emanated from the mutual consent of the parties.
11. It avers that from the foregoing, it was preposterous and improper for the Applicant to file its bill of costs claiming excessive and unjustifiable fees of Kshs 62,766.20/- comprising of commission when there was no attachment made.
12. The Respondent further avers that the Warrants of Attachment were filed in court in full knowledge that the decretal amount had been fully settled, but nevertheless the Applicant with a desire to take advantage of the situation in order to profiteer on costs, unjustly rushed through an unwarranted execution mechanism in order to justify his costs.
13. The Respondent further states that the entire Bill of costs was borne out of unwarranted and needless proceedings which were simply filed to justify unwarranted professional fees to a ravenous and hungry Auctioneer desperate to create a make believe and non-existent services and income.
14. The Respondent states that for reason that the debt claimed was settled before any attachment, the Applicant cannot base its fees on sums that were not realised from attachment merely by drawing a Proclamation.
15. It avers that the reference if allowed, would result in the Applicant's incompetent and exaggerated Bill of costs being taxed notwithstanding that all amounts were settled in accordance with the terms of the consent and prior to any attachment.
16. The Respondent prays that the reference be dismissed.



17. Parties urged the reference by written submissions, which have been duly considered.

Determination

18. I have carefully considered the Applicant's reference, the grounds and affidavit in its support, the Replying affidavit in opposition and the rival submissions. The issue for my determination is whether the reference has merit.
19. The general principle in determining taxation references was spelt out by the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board Nairobi* [2005] eKLR, where the Court held that on a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer, unless the taxing officer, erred in principle in assessing the costs for the reason that questions solely of quantum are regarded as matters which the taxing officers are particularly fitted to deal with, and the court will interfere only in exceptional cases.
20. On 27th September, 2022 parties in cause No. 1337 of 2015- Anthony Kihumba Githaiga v. Hashi Hauliers Limited, entered into a consent where the terms thereof were to be fulfilled within 30 days from the date of the said consent, meaning 30th October, 2022. Parties further agreed that on the fulfilment of the terms of the consent, the matter was to be marked as settled and the filed closed.
21. Evidently, by 30th October, 2022, the Respondent herein, had not fulfilled the terms of the consent, resulting in the decree holder taking out warrants of attachment. The Court notes that Warrants of attachment herein, were issued on 16th November, 2022 and proclamation ensued on 17th November, 2022. The judgment debtor/Respondent herein, then proceeded to pay the decretal sum on 18th November, 2022.
22. The issue then is whether firstly, the matter was settled when it was agreed to be settled, and secondly, whether the Applicant/Auctioneer deserves the costs claimed herein.
23. A consent to settle typically bars further execution proceedings once filed and adopted by the Court. In the case of *Nyota Tissue Products v. Zulfikar Hemani* (2009), it was held that an Auctioneer is not automatically entitled to costs if execution was unnecessary or wrongly carried out.
24. In the instant case however, although parties entered into a consent to settle, the Respondent/Judgment debtor failed to comply with the terms of the consent, thereby necessitating the taking out of the Warrants of attachment.
25. In my view, the Applicant acted reasonably and proportionally on account of the Respondent's non-compliance.
26. In light of the foregoing, I find and hold that the Applicant is entitled to costs on the basis that the Warrants of attachment were a necessary enforcement step occasioned by the Respondent/Judgment debtor's default.
27. The reference herein thus succeeds, and orders granted as follows: -
- i. That the decision of the Learned Deputy Registrar delivered on 13th August, 2024 on the Applicant's Bill of costs dated 13th June, 2024 be and is hereby set aside.
 - ii. That the Applicant's Bill of costs dated 13th June, 2024, be and is hereby remitted for re-evaluation by any other Deputy Registrar other than Hon. E. Riany
 - iii. That the costs of this reference be borne by the Respondent.



28. Orders accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE, 2025.

C .N. BAARI

JUDGE

Appearance:

Ms. Nkosho h/b for Mr. Makumi for the Applicant

N/A for the Respondent

Ms. Esther S – C/A

