



**Wainanina t/a Seventy-Seven Auctioneers v SBI International Holdings AG Kenya
(Miscellaneous Cause E045 of 2024) [2024] KEELRC 2663 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2663 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CAUSE E045 OF 2024
NZIOKI WA MAKAU, J
OCTOBER 29, 2024**

BETWEEN

RICHARD WAINANINA T/A SEVENTY-SEVEN AUCTIONEERS APPLICANT

AND

SBI INTERNATIONAL HOLDINGS AG KENYA RESPONDENT

RULING

1. The Applicant who is an Auctioneer, moved the Court vide an application dated 2nd May 2024 seeking party and party costs. The Respondent filed a preliminary objection asserting the bill of costs presented ought to be dismissed as it was filed by a stranger to the proceedings. It is asserted there is no basis for the bill of costs as no proclamation was ever issued. The Respondent asserts there was another bill of costs being Kisumu Misc. ELRC No. E013 of 2020 – Mary Onywondi Nyaboke t/a Lister Auctioneers v SBI International Holdings AG Kenya where the costs subject of the proposed bill of costs were allegedly paid. The Respondent asserts the Court lacks jurisdiction to entertain the taxation of bill of costs as an auctioneer cannot instruct another auctioneer. It was asserted the Applicant lacks locus standi and the bill of costs filed defective and an abuse of court process. It was asserted the bill of costs fails to comply with paragraph 69(3) of the Advocates (Remuneration) Order.
2. The preliminary objection was disposed off by way of written submissions. The preliminary objection was not a proper preliminary objection as facts have had to be ascertained. The result therefore is that the motion has had to be considered alongside the purported preliminary objection. The motion by the Applicant is one that seeks the costs arising out of the execution in Kisumu ELRC Misc. No. E013 of 2020. It was asserted in the grounds supporting the motion that the Applicant herein was instructed to proceed with execution against the Respondent and that it proceeded and was issued with a warrant of attachment of movable property in execution of a money decree. It was further asserted in the grounds that the Applicant proclaimed the Respondent’s movable property and that the Respondent had failed and/or neglected to pay the auctioneers charges despite being aware.



3. The Application is one that causes extreme worry to this Court. The gravamen of the Miscellaneous Application before me is the Miscellaneous Application No. E013 of 2020 which was followed by Miscellaneous Application No. E024 of 2024. In Miscellaneous Application No. E013 of 2020, the Applicant therein, one Mary Nyaboke t/a Lister Auctioneers sued the Respondent herein for alleged non-payment of taxed costs. In the motion, the Applicant asserted the execution was as a result of the case between Rono Cheruiyot & 15 others v SBI International Holdings AG Kenya which case was determined by my brother Nduma J. on 19th July 2019 wherein the Learned Judge awarded certain sums as well as costs therein. The Miscellaneous Application No. E013 of 2020 clearly indicates the Hon. Taxing Master issued a certificate of costs after taxing the matter. The amount certified as costs was Kshs. 125,000/- as seen in the warrants of Court issued to Seventy Seven Auctioneers though the Miscellaneous Application No. E013 of 2020 was filed by one Mary Nyaboke t/a Lister Auctioneers. There is no return of warrants either executed or not executed in the file Misc. Appl. E013 of 2020. Miscellaneous E024 of 2024 was filed seeking break-in orders. Yet again, Richard Wainaina Kiarie was indicated as the Applicant (not Richard Wainaina Kiarie t/s Seventy Seven Auctioneers). This led to the issuance of break-in orders granted by my sister Baari J. on 26th February 2024. In the same vein, there are no returns to indicate what became of the 6 shovel tractors worth Kshs. 1,200,000/- and a numberless crane valued at Kshs. 1,000,000/-, and prime mover registration mark No. KBQ 115C which were attached vide the proclamation of attachment from Seventy Seven Auctioneers dated 17th January 2024.
4. In the case before me, yet again the warrants of attachment issued for payment of Kshs. 125,000/- are displayed as an annexure in the motion by the Applicant. Similarly, just like in previous cases, there are no returns filed pursuant to the execution of these warrants as required in law. The amount now subject of the motion before me is a whopping Kshs. 347,140/- whereas the warrants issued for attachment were for a paltry Kshs. 125,000/-. It is unclear how M/s Seventy Seven Auctioneers became invested in this causes. An auctioneer cannot instruct another auctioneer. It is trite that an auctioneer receives instructions from a client – in this case a decree holder and executes the instructions always acting at the behest and for the benefit of her client. There is a maxim that states delegatus non potest delegare which means in plain English that no delegated powers can be further delegated or put another way, one to whom power is delegated cannot himself further delegate that power. This is a common law principle that defines agency in as far as the reach of delegation of such power donated by a client. In this case, the auctioneer who was granted the power to execute seems to have been supplanted by M/s Seventy Seven Auctioneers who have repeatedly made applications, attached and never indicated to Court the outcome of the proclamations and attachment. In my considered view, the present action is not only misplaced by dint of the principle of delegatus non potest delegare but also on account of it being res judicata. The decision made by Baari J. conclusively determined the matter of execution and this cannot be revisited.
5. From the foregoing it is amply clear that the motion is not merited and I hereby decline the application by the Applicant and accordingly dismiss it, with the result the preliminary objection by the Respondent succeeds. The preliminary objection is allowed with costs to the Respondent. Costs on the higher scale due to the vexatious litigation the Respondent has been subjected to and faced in the 3 miscellaneous applications cited in this Ruling.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 29TH DAY OF OCTOBER 2024

NZIOKI WA MAKAU, MCIArb.

JUDGE

