



**Mugandi t/a Clear Real Auctioneers v Jiangxi Water and Hydropower Construction Company Limited (Environment & Land Miscellaneous Case E005 of 2023) [2024] KEELC 6200 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6200 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND MISCELLANEOUS CASE E005 OF 2023  
CK NZILI, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**SAMUEL MUGANDI T/A CLEAR REAL AUCTIONEERS ..... APPLICANT**

**AND**

**JIANGXI WATER AND HYDROPOWER CONSTRUCTION COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The court is asked by an application dated 24.6.2024 to stay execution vary, set aside and or review the ruling delivered on 14.6.2024 over taxation of an auctioneers bill of costs dated 14.9.2023. The grounds are set out on the face of the application and in an affidavit in support sworn on 24.6.2024 by Jordan Yuan. The respondent contends that there exists two proclamations which are varying and composed of inflated value for the attached assets as set out in paragraph 7 of the supporting affidavit.
2. As a consequence, the taxing master was misled by the applicant based on errors on the face of the record, forged or fraudulent figures, and was therefore deceived to grant a higher award upon taxation. The applicant states that it made discoveries of the discrepancies after the taxation; otherwise, if not rectified, execution will proceed based on a wrong award contrary to the interests of justice.
3. The application is opposed by a replying affidavit of Samuel Mugendi sworn on 9.7.2024 for lack of merits and as a waste of court's judicial time. The respondent avers that there is no certificate of costs or decree capable of execution; hence, the application is both premature and misplaced. The respondent avers that the proclamation before the court is one dated 23.3.2022 regarding proclaimed goods worthy Kshs.174,839,000/=, which form was the one relied upon by the taxing master and was duly served upon the applicant through the application dated 14.9.2023 who responded to it.



4. The respondent avers that it is not true that the applicant was not aware of the proclamation form and that he is not aware of any other alleged proclamation with varying figures or values, such as the ones attached to the application by the applicant otherwise, they did not emanate from his office.
5. Similarly the respondent avers that if there were any variations or discrepancies, as alleged or at all the applicant should have raised the issues during the taxation process; otherwise, the application was an afterthought. The respondent avers that the taxing master acted on the correct principles of law and was guided by the court record in arriving at Kshs.3505,280/=; hence, the award should not be disturbed.
6. The applicable law in taxation of auctioneers bill in the *Auctioneers Act* and the Rules made thereunder. Any party aggrieved by the taxation under Rule 55 (4) of the *Rules* has to file an appeal to a judge in chambers. What is before me is, however, not an appeal but an application for a stay of execution and or setting aside of the taxation award.
7. The applicant did not file an appeal in line with the *Auctioneers Act* and rules made thereunder, within seven days of the award. Without such an appeal this court lacks jurisdiction to entertain the application in the nature it has been brought.
8. Additionally, there is no certificate of taxation or decree capable of execution for this court to stay. In *Ezekiel Kiminza t/a Auto Land Auctioneers v Mistry Valji Naran Mulji* (2017) eKLR, the court was clear on the procedure to follow in challenging a taxation award. There is no memorandum of appeal attached to the application for this court to gauge the basis of challenging the exercise of discretion by the taxing master.
9. The applicant has not followed the procedure set for this court to interfere with the discretion of the taxing master as held in *Oscar Otieno Odongo t/a Obongo Investment Auctioneers v Sukari Industries Ltd* (2019) eKLR. It is only after following such a procedure a court establishes if there was an error of principle or if the fee awarded was manifestly high.
10. The manner in which auctioneer charges are assessed was settled in *NIC Bank Ltd v S.K Ndegwa Auctioneer* (2005) eKLR. Values as per paragraph 4 of Part II of the Fourth Schedule of the *Act* are defined to be as per the value of the goods attached and not the decretal sum.
11. An auctioneer is to be remunerated for the actual work done and not on the basis of what he could have done had the attached goods been equivalent in value to the decretal sum.
12. The bill of costs was attached to the application dated 14.9.2023 as annexures marked SM “3,” “4” & “5”.
13. The applicant filed a notice of appointment dated 14.11.2023 upon service with the notice of motion. It opted to oppose the taxation by grounds of opposition dated 19.12.2023 and through written submissions. Matters of facts and evidence as per the supporting affidavit sworn by Samuel Mugendi on 14.9.2023 and the attachments to that were not disputed by way of a rival affidavit.
14. The ruling dated 14.6.2024 was guided by the caselaw of *NIC Bank Ltd v S.K Ndegwa* (*supra*). There is no error of principle demonstrated before this court. The upshot is that I find the application both incompetent and lacking merits. It is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 18<sup>th</sup> DAY OF SEPTEMBER, 2024.**

**In presence of**

C.A Kananu



Otieno for Ndaka for the applicant

Kiogora Nganga for Kariuki for respondent

**HON. C K NZILI**

**JUDGE**

