



**Joseph Kahoro Munda t/a Upstake Kenya Auctioneers v Kenya Electricity Transmission Co. Limited (KETRACO) (Miscellaneous Application E393 of 2024) [2025] KEHC 3943 (KLR) (Commercial and Tax) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3943 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E393 OF 2024**

**H NAMISI, J**

**MARCH 28, 2025**

**BETWEEN**

**JOSEPH KAHORO MUNDA T/A UPSTAKE KENYA  
AUCTIONEERS ..... APPLICANT**

**AND**

**KENYA ELECTRICITY TRANSMISSION CO. LIMITED  
(KETRACO) ..... RESPONDENT**

**RULING**

1. The Respondent filed Notice of Motion dated 12 July 2024 seeking the following prayers:
  - i. (spent)
  - ii. That this Honourable Court be pleased to stay the Taxation of the Auctioneer's Bill of Costs dated 3 May 2024 pending hearing and determination of this Application;
  - iii. That this Honourable Court be pleased to stay the taxation of the Auctioneer's Bill of Costs dated 3 May 2024 pending the hearing and determination of the Objector's Application dated 19 December 2022 in Misc Application No. E445 of 2019: *Instalaciones Inabensa S.A v KETRACO*;
  - iv. That the costs of the Application be in the cause.
2. The Application is supported by the Affidavit sworn by Florence Mitey and premised on the following grounds:



- i. The Applicant (the Auctioneer) filed a Bill of Cost dated 3 May 2024 following the Warrants of Attachment dated 25 November 2022 and the Proclamation of Attachment dated 14 December 2022 issued in Misc Application No. E445 of 2019;
  - ii. The Auctioneer's Bill of Cost is pending for taxation before the Deputy Registrar;
  - iii. The warrants of attachment and subsequent attachment vide the Proclamation Notice dated 14 December 2022 have been challenged by way of an Objection Application dated 19 December 2022 in Misc Application E445 of 2019;
  - iv. The Objector in the said application is seeking to have the proclamation Notice dated 14 December 2022 by the Auctioneers in execution of the decree and any subsequent action by the Auctioneers or Decree-Holder declared illegal, irregular and unlawful entirely;
  - v. The Objector's application dated 19 December 2024 in Misc Application E.445 of 2019 is pending for hearing and determination by this Honourable Court;
  - vi. If the Objector's Application dated 19 December 2024 in Misc Application No. E445 of 2019 is successful and this Honourable Court declares the Proclamation Notice dated 14 December 2022 to be illegal, irregular and unlawful and set aside the same, the Respondent herein will not be liable to pay the cost of the auctioneer;
  - vii. The Deputy Registrar has issued directions for parties to file written submissions on the Auctioneer's Bull of Costs dated 3 May 2024 and this matter is scheduled for mention on 15 July 2024 to confirm filing of submissions;
  - viii. It will be prejudicial, unjust and unfair for the Deputy Registrar to proceed with taxation of the Auctioneer's Bill of Cost dated 3 May 2024 while the Objection proceedings in Misc Application No. E445 of 2019 are pending for hearing and determination by this Honourable Court;
  - ix. The Respondent will suffer irreparable loss, if the Auctioneer's Bill of Costs dated 3 May 2024 is taxed and costs are paid, as the Auctioneer will not be in a position to refund the money in the event Objection proceeding is successful and the Proclamation Notice is set aside;
  - x. The Respondent shall suffer grave prejudice if the Deputy Registrar proceeds to tax the Auctioneer's Bill of Costs dated 3 May 2024 prior to hearing and determination of the objection proceedings in Misc Application No. E445 of 2019;
  - xi. It is in the interest of justice that the prayers sought in this Application be granted forthwith;
  - xii. The Auctioneer will not suffer prejudice if the orders sought are granted
3. The Supporting Affidavit was a repetition of the grounds of the Application.
  4. In response thereto, the Auctioneer filed a Replying Affidavit in which he averred that the Objector Application dated 19 December 2022 filed in Misc Application No. E445 of 2019 was abandoned by the parties after the Court issued an order staying the attachment and sale of Motor vehicle registration number Kxx 8xxK, which was the only asset indicated on the Proclamation Notice.
  5. The terms of the Court Order dated 21 December 2022 in Misc Application No. E445 of 2019 were as follows:
    - i. That the Application be served on all parties;



- ii. That the Respondents do file and serve responses within 14 days after service;
  - iii. That thereafter the Applicant do file and serve written submissions not exceeding 3 pages within 14 days after service;
  - iv. That the Respondents then file and serve written submissions not exceeding 3 pages within 14 days after service of the Objector's submissions;
  - v. That directions on 8 February 2023;
  - vi. That attachment and sale of motor vehicle registration no. Kxx 8xx Mercedes Benz is hereby stayed until the hearing and determination of the objection proceedings.
6. It was the Applicant's averment that the matter, Misc Application No E445 of 2019, was seemingly abandoned since the parties did not take any further steps.
  7. The Application was canvassed by way of written submissions.
  8. On the issue of stay of taxation of the Auctioneer's Bill of Costs, the Respondent submitted that since the legality of the Warrants of Attachment and subsequent proclamation has been challenged in Misc. Application No. E445 of 2019, then the Court ought to grant the stay herein. The Respondent relied on the case of *Factory Guards Limited v Abel Vundi Kitungu* (Miscellaneous Application 621 of 2014) [2015] KEHC 116 (KLR) (Civ) (24 November 2015) (Ruling) where the High Court ordered the Respondents to be personally liable to pay the auctioneer's cost where it found the proclamation and warrants attachment were illegal and unlawful.
  9. On his part, the Applicant submitted that the Respondent has not adduced any evidence to demonstrate that the Objector application dated 19 December 2022 is pending in court. He argued that at the very least, the Respondent should state the current position of the objector application given that the Respondent is the employer of the Objector and their interests are inseparable.
  10. The Applicant submitted that negotiations collapsed when the Respondent failed to sign the consent agreement.
  11. The core of the Application herein appears to be the proceedings in Misc Application No. E445 of 2019. I have taken the liberty to peruse the file on the online platform, since neither the Applicant nor Respondent has placed before me any material to inform me as to the current position in that matter. It is clear that a lot has transpired since the orders of 21 December 2022. Though I am not able to discern what transpired in the Application dated 19 December 2022 that gave rise to the orders of 21 December 2022, my perusal of the file reveals that there are applications filed subsequent to that of 19 December 2022. No further orders were issued with regard to that particular application. In the absence of evidence to the contrary, which the Respondent ought to have provided if the same existed, it is presumable that the application was abandoned by the parties. The parties in Misc Application No. E445 of 2019 seem to have progressed with other applications, and not the Objector application.
  12. In view of the foregoing, I see no reason to stay the taxation herein. I disallow the Application dated 12 June 2024, with costs to the Applicant.

**DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF MARCH 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:



Joseph Munda .....for the Applicant

Yvonne Okello h/b Patrick Barasa .....for the Respondent

Libertine Achieng ..... Court Assistant

