



REPUBLIC OF KENYA



KENYA LAW
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**Koral Paints v Mokuia t/a Moco Auctioneers (Miscellaneous Application
E027 of 2022) [2025] KEHC 7244 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MISCELLANEOUS APPLICATION E027 OF 2022
RPV WENDOH, J
MAY 30, 2025**

BETWEEN

KORAL PAINTS APPLICANT

AND

KENNEDY MORURI MOKUA T/A MOCO AUCTIONEERS RESPONDENT

RULING

1. The Chamber Summons (application) for consideration is dated 24/10/2022 filed by Koral Paints (the applicant) seeking the following orders:-
 - a. Spent.
 - b. That this court be pleased to grant an order of stay of execution of the ruling in Rongo Misc. App. No. 3 of 2022 pending the hearing and determination of the intended appeal.
 - c. That this court be pleased to enlarge time within which to file an appeal against the decision of the Taxing Master delivered on the 26 /5/2022 in Rongo Misc. App. No. 3 of 2022.
 - d. Costs of the application be provided for.
2. The application is premised on the grounds on its face and the supporting affidavit of Derrick Odhiambo Counsel who has conduct of this matter on behalf of the applicant. Counsel deposed that on 28/1/2022, he received instructions from the applicant to defend its interests in Rongo Misc. App. No. 3 of 2022; that upon being heard and conclusion of the matter, Kennedy Moruri Mokuia T/ A Moco Auctioneers (the respondent) served the applicant with a certificate of costs on 24/6/2022 which was forwarded to the insurance and in turn Counsel got to know of the certificate of costs on 28/6/2022; that the applicant was never served with the ruling notice; that the applicant is desirous to appeal against the decision of the Taxing Master but the time has since lapsed; that the delay in filing



the appeal was due to the fact that Counsel for the applicant was never served with a ruling notice and the post ruling negotiations have since failed.

3. Counsel urged that the intended appeal has high chances of success; that this application has been filed without undue delay and it is in the interest of justice that this application is allowed.
4. The application was opposed. The respondent through Kennedy Mokuia Moruri filed a replying affidavit dated 10/2/2023. It was deposed that the applicant has come to this court with unclean hands; that the applicant is barred by Rule 55 of the Auctioneers Act, 1996 which provides that the appeal ought to have been filed within 7 days; that the amount assessed at Kshs. 280,000/= had already been paid; that what is outstanding is the issue of costs; that the bill of costs is pending; that the applicant is wasting court's time and the application should be dismissed with costs as it is without merit, is vexatious and frivolous.
5. The court directed that the application proceed by way of written submissions. Although Counsel appearing for the applicant indicated that he had filed his submissions, the same are not in the court record. The respondent's Counsel was directed to file his submissions within 3 days from 30/4/2024, but the same has not been complied with. I will therefore proceed and consider the application and its response.
6. The issues for determination is whether time should be enlarged to file an appeal against the decision of the Taxing Master dated 26/5/2022 in Misc. Application No. 3 of 2022.
7. Rule 55 (5) provides that a party desirous of appealing against the decision of the Taxing Master should do so within 7 days of the decision. The impugned decision which the applicant wishes to appeal is dated 26/5/2022. The appeal ought to have been filed on or before 3/6/2022.
8. The applicant contends that it was not aware of the ruling of the respondent's bill of costs until it was served with the certificate of costs on 24/6/2022. The certificate of costs in question is dated 16/6/2022 and it was the Auctioneers costs taxed at Kshs. 280,000/=. The respondent's position is that the same has been paid and the only issue left is the Advocates' fee and there is a pending assessment in court.
9. In the respondent's replying affidavit, 'KMM-1' is a cheque for Kshs. 280,000/= from the Metropolitan Canon Insurance, a fact which has not been rebutted by the applicant. There are the costs which the applicant intends to dispute but which have already been paid. In the circumstances, I do not see how the present application is feasible. It has already been overtaken by events as the costs have been settled.
10. The foregone conclusion is that the application dated 24/10/2022 is devoid of merit. It is hereby dismissed with costs to the respondent.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 30TH DAY OF MAY, 2024.

R. WENDOH

JUDGE

Ruling delivered in presence of;-

No appearance for the Applicant

No appearance for the Respondent

Emma & Phelix - Court Assistants.

