



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tax Services Limited v Kamwalo t/a Big Step Enterprises Auctioneers (Civil Appeal E816 of 2022) [2025] KEHC 11512 (KLR) (Civ) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11512 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E816 OF 2022**

**AC MRIMA, J**

**JULY 31, 2025**

**BETWEEN**

**TAX SERVICES LIMITED ..... APPELLANT**

**AND**

**STEPHEN MUTINDA KAMWALO T/A BIG STEP ENTERPRISES  
AUCTIONEERS ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. M. Mutua (RM) in Small Claims Commercial Case No. E4363 of 2022 delivered on 30th September 2022)*

**JUDGMENT**

**Background:**

1. On 23<sup>rd</sup> June 2023, the Auctioneers Licensing Board (hereinafter referred to as ‘the Board’) delivered its ruling in respect of Stephen Mutinda Kamwalo t/a Big Step Enterprises Auctioneer’s (the Respondent herein) Bill of Costs dated 19<sup>th</sup> April 2022. It assessed the costs at Kshs. 87,602.17/-.
2. Subsequently, the Respondent, vide an application which he instituted in the Milimani Small Claims Court Commercial Case No. E4363 of 2022, sought to have the Board’s ruling adopted as a judgment of the Court.
3. On 30<sup>th</sup> September 2022, the Court allowed the Respondent’s claim and entered judgment in the sum of Kshs. 87,602.19/- together with costs and interests thereon. Accordingly, a decree was issued on 13<sup>th</sup> October 2022.
4. The foregoing sequence of events instigated the appeal, subject of this judgment.



### **The Appeal:**

5. The Appellant, Overtime Management & Tax Services Limited, was aggrieved. It sought that the judgment and the attendant decree be set aside on grounds as hereunder: -
  1. The learned Magistrate erred in law and in fact by finding that the Appellant was liable to the Respondent for the claim of a sum of Kshs. 87,602.17/- costs of the claim and interests from the date of filing the claim.
  2. The learned trial magistrate erred in law and in fact in failing to consider the Respondent did not file a claim but only an application seeking to enter Judgment against the Appellant for a sum of Kshs. 87,602/- awarded by the Auctioneers Licensing Board on 23<sup>rd</sup> June 2022 as an amount due to the Respondent.
  3. The learned magistrate erred in law and fact in failing to take into account that the Bill of Costs taxed at the Auctioneers Licensing Board ought to have been filed at the Chief Magistrates Court at Milimani (MCCC No. 8026) since the firm of Kingori Kariuki & CO. Advocates who were acting for the Defendant, had instructed the Respondent to receive warrants of attachment and sale by public auction from the said court that executed the decree. The Respondent had filed the Bill of Costs before the Board seeking his costs for services rendered.
  4. The Learned trial magistrate erred in law and fact in failing to consider that the appellant was not served with the Bill of costs filed by the Respondent in the Auctioneers Licensing Board and that the Appellant has filed an application seeking set aside the award.
  5. The learned magistrate erred in law and fact in failing to take into account and to consider the evidence adduced on behalf of the Appellant and the submission of the learned counsel for the Appellant by finding in favour of the Respondent herein.
  6. The learned magistrate erred in law and fact in failing to consider the fact that the court did not have jurisdiction to entertain the application filed by the Respondent.
  7. The learned trial magistrate erred in law by failing to exercise his discretion judiciously and in consideration of the facts and law before him by arriving at an unfair and unjust decision.
6. The Appellant did not file submissions in support of its case.

### **The Respondent's case:**

7. The Respondent challenged the appeal through written submissions dated 28<sup>th</sup> March 2025. It was his case that he withdrew his Bill of Costs which he had filed in the High Court and filed it before the Board, which to him, was the the appropriate forum by dint of Rule 55(3) of the Auctioneers Rules.
8. It submitted that there was no dispute that it was instructed by the Appellant and that it rendered services that resulted in the costs assessed at Kshs. 108,152/- upon which the trial Court issued the warrants of attachment and sale dated 13<sup>th</sup> October 2022 for execution. He further submitted that the Appellant filed the present appeal after proclamation of the Appellant's goods in execution of the decree from the trial Court. It was his position that a stay of execution was granted with the condition that the Appellant deposits 50% of the decretal sum. The Respondent decried that the case has stalled for more than 4 years on the basis that the Appellant had been waiting for the outcome of their application to set aside the Board's taxation, which application was eventually disallowed. The Board, it submitted, adopted the Small Claims Court judgment.



9. In conclusion, the Respondent urged this Court to find that he was entitled to his fees and execution of the warrants of attachment and sale issued to M/S Outright Waves Auctioneers ought to proceed. He urged this Court to dismiss the appeal with costs.

**Analysis:**

10. Section 38 of the *Small Claims Court Act* [Cap. 10A of the Laws of Kenya, hereinafter referred to as ‘the Act’] provides for appeals from decisions and/or orders of the Small Claims Court. Under that provision, a party may appeal to the High Court only on matters of law and that the decision thereof is final. Whereas there has been no universally accepted definition of the term ‘matters of law’, there has been some working definitions thereto. For instance, the Supreme Court of Kenya in *Petition No. 7 of 2013 Mary Wambui Munene v. Peter Gichuki Kingara and Six Others*, [2014] eKLR held that ‘jurisdiction is a pure question of law and should be resolved on priority basis’. This Court is, therefore, properly seized of this appeal since the issues at hand are largely jurisdictional.
11. On a careful consideration of the record, the submissions and the decisions referred to therein, the following issues that arise for determination: -
- i. Whether the Small Claims Court had jurisdiction to adopt the decision of the Board as a judgment of the Court.
  - ii. Depending on (i) above, whether the Respondent filed any claim at the Small Claims Court, and if so, whether the application to adopt the Board’s decision was proper in law.
  - iii. Whether the Appellant was served with the Bill of Costs at the Board.
12. This Court will now deal with the above issues as under.

**Whether the Small Claims Court had jurisdiction to adopt the decision of the Board as a judgment of the Court:**

13. The Appellant claimed that the Small Claims Court did not have jurisdiction to adopt the decision of the Board as a judgment because the taxed Bill of Costs ought to have been filed at the Chief Magistrates Court.
14. Jurisdiction is central to any Court proceedings. According to Halsbury’s Laws of England (4<sup>th</sup> Ed.) Vol. 9 it is “the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.”
15. In this dispute, the contest of jurisdiction arose for the first time on appeal. That notwithstanding, this Court is properly seized of the issue and ought to determine it. That was so held by the Supreme Court in *Petition No. 20 of (E023) 2022, Isaac Aluoch Polo Aluochier -vs- Independent Electoral and Boundaries Commission & 17 Others* as follows: -

.... It is equally now firmly established that a point of jurisdiction can be raised at any time, formally by a notice of preliminary objection, grounds of opposition, viva voce during arguments or by the Court suo moto because challenging the jurisdiction of a Court is a threshold issue. Jurisdiction can only be conferred on a court by either *the Constitution* or statute. A court cannot expand its jurisdiction through judicial craft or innovation



16. Further, the Court of Appeal in *Kenya Ports Authority vs Modern Holding [EA] Limited* [2017] eKLR spoke to the issue more elaborately in the following fashion: -

... We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even *viva voce* and indeed, even by the court itself provided that where the court raises it *suo moto* parties are to be accorded the opportunity to be heard.

17. Section 12 of the *Small Claims Court Act* provides the for the jurisdiction of the Small Claims Court as follows: -

1. Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to-
  - a. a contract for sale and supply of goods or services;
  - b. a contract relating to money held and received;
  - c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
  - d. compensation for personal injuries; and
  - e. set-off and counterclaim under any contract.
- (2) Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.
- (3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.

18. Section 24(5) of the *Auctioneers Act* donates power to the Board as follows: -

- (5) The Board may make such order as to the payment by any party of any costs or witness' expenses and as to the expenses of the Board or the members thereof in connection with the hearing of any complaint as it may think fit.

19. It is Section 24(6) of the Act that donates power to the subordinate Court to adopt the decisions of the Board as orders of a Court. It provides as follow: -

- (6) Any order of the Board may be filed with a subordinate Court and shall, upon service of the notice of filing thereof upon the licensed auctioneer, be enforceable in the same manner as an order of the subordinate Court to the like effect.

20. In this matter, the Board assessed the Auctioneers costs at Kshs. 87,602.19/-. It was that decision that would be enforced by any Magistrates Court within whose jurisdiction the amount fell within. According to Section 12(3) of the Small Claims Act, the sum at hand was within the pecuniary jurisdiction of the Small Claims Court and as such, the Court had jurisdiction over the matter. To that extent, therefore, the Appellant's claim that it is instead only the Chief Magistrates Court that had jurisdiction, is without merit and is for rejection.



**Whether the Respondent filed any claim at the Small Claims Court, and if so, whether the application to adopt the Board’s decision was proper in law:**

21. The Appellant contended that the Respondent did not file any claim at the Small Claims Court and as such the Court improperly dealt with the matter without jurisdiction. From the record, the Respondent did not file a statement of claim, but instead filed a Notice of Motion dated 14<sup>th</sup> July 2022.
22. Section 24(6) of the Act provides for adoption of an order of the Board by a Court. The starting point is when the Board transmits its order to the Court. Once that step is taken, the Board is required to serve a notice of filing of the order to the Auctioneer. It is after the service that the order can be enforced as a decision of a Court. Therefore, the procedure of enforcing an order of the Board is different from how a Claimant institutes a claim before the Small Claims Court. Ordinarily, a Claimant is required to file a formal statement of claim before the Small Claims Court. However, in the event a Board wishes to enforce its orders, the requirement is only to lodge the order and notify the Auctioneer. The Court then proceeds to satisfy itself that proper service was undertaken and enforces the order.
23. In this case, whereas the Auctioneer is the one who transmitted the Board’s order to the Court through an application, the Court adopted the order as its decision and sanctioned execution. To this Court, the procedural infraction at hand did not occasion any miscarriage of justice to the Appellant. Further, there is neither a contention that the Bill of Costs was not taxed at Kshs. 108,152/- nor that the Board raised any concern over its decision. All in all, the procedure adopted at the Small Claims Court cannot be faulted.

**Whether the Appellant was served with the Bill of Costs at the Board:**

24. Section 38 of the *Small Claims Court Act* limits appeals to this Court only on matters of law. The issue of service of the Bill of Costs is a pure issue of fact which calls upon this Court to interrogate factual allegations. This Court lacks such jurisdiction and the issue fails.

**Disposition:**

25. Having considered all the issues raised in this appeal, the appeal seems to be unsuccessful and this Court hereby issues the following final orders: -
  - (a) The appeal is hereby dismissed in its entirety.
  - (b) Costs be borne by the Respondent.
26. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

No appearance for parties.

Amina/Michael – Court Assistants.

