



REPUBLIC OF KENYA



KENYA LAW
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**Amadi v Njoroge (Environment and Land Miscellaneous Application
18 of 2020) [2022] KEELC 3431 (KLR) (7 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 18 OF 2020
DO OHUNGO, J
JUNE 7, 2022**

BETWEEN

SHEM ISHAHILIDZA AMADI APPLICANT

AND

SOPHIA WANJIRU NJOROGE RESPONDENT

RULING

1. By Notice of Motion dated 14th October 2021, the applicant seeks the following orders:
 1. [Spent]
 2. That this Honourable Court be pleased to enjoin the Interested Party in this suit.
 3. That this Honourable Court be pleased to grant stay of execution of the certificate of costs dated 3rd September 2021 pending hearing and determination of this application.
 5. Cost of this application.
2. The application is supported by an affidavit sworn by the applicant. He deposed that the respondent's bill of costs was taxed at KShs 237,255 on 11th August 2021 and that he got into communication with the respondent with a view to settling the sum. That on 22nd September 2021, parties agreed on payment by instalments with the first instalment of KShs 150,000 being due on 10th October 2021 and the balance to be paid in two equal monthly instalments. That he deposited KShs 150,000 with the respondent's advocates on 7th October 2021. That he was served with an auctioneer's invoice for KShs 146,685 on 12th October 2021. According to him, the respondent acted in bad faith and was renegeing on the agreement as to payment by instalments. He added that he was not served with warrants of attachment and proclamation of attachment and that he is ready to deposit the balance of KShs 87,255 in court.



3. In response, the respondent filed a replying affidavit sworn by Ogongo Joshua, an advocate in conduct of the matter on her behalf. He deposed that upon the ruling on taxation being delivered, they notified the applicant on 17th and 18th August 2021 and that they later instructed M/s Eshikoni Auctioneers on 6th September 2021 to recover the taxed costs. That the auctioneers issued a proclamation against the applicant as well as an invoice.
4. The application was canvassed through written submissions which the applicant and the respondent duly filed.
5. The applicant cited Section 13 of the *Auctioneers Act*, 1996 and the case of *National Bank of Kenya Ltd v Joly Family Stores & another* [2005] eKLR and submitted that the auctioneer's charges are illegal. That the execution is premature in view of the agreement on payment by instalment. He therefore urged the court to allow the application.
6. The respondent argued that prayer 2 of the application which seeks joinder of the auctioneer as an interested party cannot be granted as the auctioneer has not been given a chance to be heard. Reliance was placed on the case of *In re Estate of Barasa Kanenje Manyia (Deceased)* [2020] eKLR. Further, that there is no dispute that the taxed costs are payable and that the applicant should engage the auctioneers regarding payment of their charges. Regarding prayer 3 of the application, the respondent argued that it is spent.
7. I have considered the application, the affidavits and the submissions. As correctly pointed out by the respondent, the application before the court does not have prayer 4 and as drawn, prayer 3 is spent. Thus, the only prayer that falls for consideration is prayer 2. I must also add that the applicant has not disputed the fact that costs were taxed and that the amount payable by him is known. Considering that there is no order of stay of execution, he should have long settled the taxed costs in full, even if he paid by the suggested instalments.
8. Regarding the question of whether or not to join the auctioneer to this case as an interested party, I note that this matter was commenced through Notice of Motion dated 31st August 2020, through which the applicant sought leave to appeal out of time against a ruling delivered in Butali P.M.C. E.L.C. No. 122 of 2018. The said application was heard and conclusively determined through ruling delivered on 23rd March 2021. It is the said ruling that also awarded the costs which were later taxed. It follows therefore that this is a concluded matter. No valid reason has been advanced to warrant joining an interested party to a concluded matter. If the applicant has any dispute with the auctioneer regarding the quantum of the auctioneer's charges, such a dispute should be lodged before the registrar for determination in accordance with Rule 55 of the Auctioneers Rules, 1997.
9. In view of the foregoing discourse, I find no merit in Notice of Motion dated 14th October 2021. I dismiss the application with costs to the respondent.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF JUNE 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the applicant

Mr Ogongo for the respondent

Court Assistant: E. Juma

