



REPUBLIC OF KENYA



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Benard Onkoba t/a Betico Auctioneers v SMEP DTM Limited (Miscellaneous Civil Application 3 of 2016) [2023] KEHC 26463 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
MISCELLANEOUS CIVIL APPLICATION 3 OF 2016
AC MRIMA, J
DECEMBER 14, 2023**

BETWEEN

BENARD ONKOBA T/A BETICO AUCTIONEERS APPLICANT

AND

SMEP DTM LIMITED RESPONDENT

RULING

1. The Applicant herein, Benard Onkoba, is an Auctioneer carrying on business in the name and style of Betico Auctioneers. He was instructed by the Respondent herein, SMEP DTM Limited, to offer services, which he successfully undertook.
2. As the payment of his fees was not forthcoming, he filed a Bill of Costs before this Court for taxation. The Bill is dated 9th February 2016.
3. The Respondent opposed the Bill of Costs by filing a Notice of Preliminary Objection dated 17th October 2017.
4. The objection was premised on the provisions of Rule 55(3) of the *Auctioneers Rules*, 1997 and the *Auctioneers (Practice) Rules*, 2009.
5. It impugned the jurisdiction of the High Court and by extension that of the Deputy Registrar (as a Taxing Officer) on the ground that the matter ought to have been filed in the Magistracy on account of the amount involved being a claim for Kshs. 1,832,366/=.
6. When the matter came before the Hon. Deputy Registrar for hearing, the Registrar, rightly so, referred it to the Judge for the hearing and determination of the objection.
7. This Court directed the parties to file and exchange written submissions on the objection. Both parties complied. Some decisions were referred by the parties.



8. The objection alongside the written submissions and the decisions thereto has been carefully considered by this Court.
9. There is no doubt that the objection raises a pure point of law and, hence, it qualifies to be dealt with as such.
10. The objection is not complex. Rule 55 of the Auctioneers Rules, 1997 provides as follows: -
 55. Fees and disbursements payable to an auctioneer
 - (1) Except as may be provided by any other written law or by contract the fees set out in the Fourth Schedule payable to the auctioneer for the attachment, repossession and sale of movable and immovable property under court warrants or letters of instructions shall be charged in accordance with these Rules.
 - (2) Where a dispute arises as to the amount of fees payable to an auctioneer—
 - (a) in proceedings before the High Court; or
 - (b) where the value of the property attached or repossessed would bring any proceedings in connection with it within the monetary jurisdiction of the High Court, a Registrar, as defined in the *Civil Procedure Rules* (Cap. 21, Sub. Leg.), may on the application of any party to the dispute assess the fee payable.
 - (3) In any other case where a dispute arises as to the amount of fees payable to an auctioneer a magistrate or the Board may, on the application of any party to the dispute, assess the fees payable.
 - (4) An appeal from a decision of a registrar or a magistrate or the Board under sub rules (2) and (3) shall be to a Judge in chambers.
 - (5) The memorandum of appeal, by way of chamber summons setting out the grounds of the appeal, shall be filed within 7 days of the decision of the registrar or magistrate.
11. The Applicant herein was instructed by way of letters of instruction to recover some moneys from several persons. The cumulative amount of fees he claimed was Kshs. 1,832,366/=.
12. The Bill of Costs was filed on 15th February 2016. By then the jurisdiction of the Magistrates Court was guided by the [Magistrates Court Act](#), No. 26 of 2015 which came into operation on 2nd January 2016.
13. Section 7 thereof capped the pecuniary jurisdiction of a Chief Magistrate at Kshs. 20 Million. The Magistrate Courts at the Kitale Law Courts has for the longest been presided over by a Chief Magistrate among other 10 Magistrates of different cadres.
14. Therefore, pursuant to Rule 55 of the Auctioneer Rules, 1997 the Applicant's claim for his fees of Kshs. 1,832,366/= fell within the jurisdiction of the Magistrates Courts or the Board and not before the High Court. In this case, the High Court reserves the appellate jurisdiction.
15. As such, the objection is merited. The Deputy Registrar is deprived of jurisdiction over the Bill of Costs.



16. Alive to Article 48 of the [Constitution](#) which strides to enhance access to justice by inter alia keeping costs of litigations at the lowest, this Court will instead not strike out the Bill of Costs herein, but shall instead transfer it to the Magistrates Courts for further dealing. However, the Applicant will bear the costs of the objection.
17. Consequently, the following final orders do hereby issue: -
 - a. The Notice of Preliminary Objection dated 17th October 2017 is hereby sustained.
 - b. This matter is hereby transferred to the Chief Magistrates Court at Kitale for further dealing.
 - c. The Applicant shall bear the costs of the objection.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 14TH DAY OF DECEMBER, 2023.

A. C. MRIMA

JUDGE

Ruling delivered virtually in the presence of:

Mr. Momanyi, Learned Counsel for the Applicant.

Mr. Kidiavai, Learned Counsel for the Respondent.

Chemosop/Duke – Court Assistants.

