



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. APPLICATION NO. E021 OF 2022**

**ECOBANK KENYA LIMITED.....APPLICANT**

**VERSUS**

**SADIZUE ENTEPRISES AUCTIONEERS.....RESPONDENT**

**RULING**

1) Ecobank (K) Ltd, the applicant herein took out the chamber summons dated 19<sup>th</sup> January 2022 whereof it sought for the following orders:

- i. Leave be granted to the applicant to lodge its notice of appeal out of time.*
- ii. The applicant annexed proposed a notice of appeal be deemed to have been properly filed and served on the date of this honourable court’s ruling on this application.*
- iii. This honourable court be pleased to grant any other or further order that it deems fit and adjust to grant.*
- iv. Costs of this application be in the appeal.*

2) The applicant filed the affidavit sworn by Sammy Miringu in support of the summons. The applicant was permitted to prosecute the application exparte when the respondent failed to respond to the summons and when it also failed to attend the interpartes hearing.

3) I have considered the grounds set out on the face of the summons and the facts deponed in the supporting affidavit. It is the submission of the applicant that the respondent’s bill of costs was heard by the Auctioneering Licensing Board hereinafter referred or as the ‘Board’. It is stated that on 30<sup>th</sup> July 2021, the Board delivered its ruling in which the Board awarded the respondent costs assessed at ksh.89,990/=.

4) It is the averment of the applicant that the Board delivered its ruling in the absence of the parties and without notice. It is the submission of the applicant that it only became aware of the delivery of the Board’s ruling when it received a demand notice from the respondent demanding the release of costs awarded by the Board.

5) It is said that the applicant learnt of the Board’s ruling after the lapse of the time required to file a notice of appeal. The applicant’s averment have not been controverted.

6) After a careful consideration of the applicant’s arguments, I find the reason(s) advanced to explain the delay to be plausible and uncontested. Consequently, I find the summons dated 19/1/2022 to be meritorious. The applicant is granted leave of 14 days to file and serve a notice of appeal out of time. Costs of the summons to abide the outcome of the intended appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2022.**

.....

**J. K. SERGON**

**JUDGE**

**IN THE PRESENCE OF:**

..... **FOR THE APPLICANT**

..... **FOR THE RESPONDENT**