

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO. 378 OF 2014

JESSE MBURU GITAU T/A GALLANT

WORLD WIDE AUCTIONEERS.....APPELLANT

VERSUS

THE AUCTIONEERS LICENSING BOARD.....RESPONDENT

(From the decision of the Auctioneers Licencing Board contained in a letter dated 15th April, 2014)

JUDGEMENT

The record before me is a profile of several disputes attributed to the appellant who is an auctioneer as against the respondent, a statutory regulatory body involved in ensuring that all auctioneers abide by the regulations set out in the Auctioneers Act and regulations thereunder.

The appeal before me followed a decision by the respondent to deny him class B licence and instead recommending that he be issued with class A licence. It was the appellant's case that the respondent erred in refusing to grant him class B licence without any justification whatsoever, and that interpretation of Section 10 (3) of the Auctioneers Act No. 5 of 1996 was a misdirection. It was further alleged by the appellant that the respondent misdirected itself on the meaning of section 10 (2) (b) of the said Act in holding that he was a member of parliament or a counsellor, whereas he was a member of county assembly.

Further that the denial of class B licence was *ultra vires* the Act and in so doing, the appellant was denied his fundamental rights contrary to Article 45 of the Constitution. It was further alleged in the Memorandum of Appeal that the decision of the respondent was an outright breach of the appellant's legitimate expectations and a further breach of the spirit and purport of Section 11 of the Act.

The order sought in the appeal is that Section 10 (2) of the Act does not bar the appellant from holding any class of auctioneering licence, and that he should be issued with class B licence forthwith. The appeal is opposed and parties have made their submissions which I have noted.

After reviewing provisions of Section 10 (3) of the Act, I am persuaded that the interpretation by the respondent was correct. The said section reads as follows,

“A person who is a member of parliament or a counsellor shall be entitled to hold a general licence enabling him to realise securities and carry out pre possessions in such parts of the country as may be specified therein”.

It is common knowledge that a member of county assembly in the current Constitution is a person who used to be called a counsellor in the previous governing structure. It will amount to splitting hairs if one were to give it any other meaning. Having said so, it cannot be said that the respondent's action was *ultra vires*.

There is no breach of any fundamental right or governing provisions of law. I am fortified in so holding

by the fact that subsequent to the filing of this appeal, the appellant applied and was issued with class A licence which in fact was approved by the respondent. He did not object thereto. In effect this appeal has been overtaken by events.

In view of the foregoing, I see no merit in the appeal which is hereby dismissed. Each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 27th Day of July, 2017

A. MBOGHOLI MSAGHA

JUDGE