



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 377 OF 2017

NATHAN PALA.....APPELLANT

VERSUS

AUCTIONEERS LICENSING BOARD.....RESPONDENT

RULING

The Appellant was admitted to the bar as an Advocate of the High Court of Kenya on 5th May, 2017. At the time of his admission, he was a licensed auctioneer and held a valid auctioneers licence. Upon realizing that he had been admitted as an Advocate, the Respondent invoked the provisions of section 10 (2)(c) of the Auctioneers Act which bars Advocates from practicing as auctioneers and revoked the Appellant's Auctioneer's license in accordance with section 18 (1)(b) of the Auctioneers Act.

Aggrieved by the decision of the Respondent, the Appellant filed a Memorandum of Appeal as well as the instant Application seeking a stay of the Respondent's decision pending the hearing and determination of the appeal. The application is premised on the grounds appearing on the face of the application as well as on the Supporting Affidavit of NATHAN PALA, the Appellant herein. The Appellant depones that by virtue of a partnership deed executed on 24th May, 2017, additional partners were added to the auctioneers firm and on 27th June, 2017, a Certificate of Registration of Change of Particulars was duly issued.

The Appellant argues that the firm is not a sole proprietorship as it has 4 directors who are auctioneers and that the name of the Applicant cannot be removed from the register by virtue of him becoming an Advocate. **Section 10 (2) (c) of the Auctioneers Act** provides that,

“Notwithstanding the provisions of subsection (1), a person who is an advocate deemed under [section 30A](#) of the Advocates Act ([Cap. 16](#)) to be practicing in his professional capacity or is employed in any capacity by such advocate shall not be eligible to be licensed under this Act.”

The Auctioneers licensing Board is empowered to revoke an Auctioneers licence under section 18 (l) (b) of the Auctioneers Act. The said section provides;

In addition to the powers of the Board under section 24, the board may revoke a licence if

(b) any event occurs which renders the licenced auctioneer ineligible to hold a licence under the Act.

Under the act, one such even, is when an auctioneer is deemed to be practicing in his professional capacity as provided for under section 10 (2) (c) of the Act.

The Applicant has argued that if the firm is wound up, its likely to affect the partners who operate within the firm and who trade in the name of Muhatia pata which is a partnership. This court has perused the licence dated 15th March, 2017 and the same was granted to NATHAN MUHATIA PALA as a sole proprietor. I have also perused the certificate of registration of change of particulars issued on the 27th June, 2017 which was issued following a partnership Agreement made on the 24th May, 2017. The Agreement was entered into, shortly after the Applicant was admitted as an Advocate of the High court of Kenya. The certificate of registration of change of particulars only bring in, other persons as partners but the Applicant has retained interest in the business.

I am aware that at this stage, the court should not consider the merits of the Appeal but the aim of the above narrative is to help it appreciate if the Appeal is arguable and if it is likely to succeed.

In my opinion, the Appeal is not arguable and in any event, the Applicant has not satisfied the court that he is deserving of the orders that he has sought. In the premises, the order that commends itself to this court, is that the application dated the 25th July, 2017 has no merits and it is hereby dismissed with costs to the Respondents.

It is so ordered.

Dated, Signed and Delivered at Nairobi this **29th** Day of **November, 2017**.

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Appellant

..... For the Respondent