



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUSIA.**

**ENVIRONMENT AND LAND CASE NO. 20 OF 2012.**

**THE CHURCH COMMISSIONERS FOR KENYA.....APPLICANT**

**VERSUS**

**ALBERT EKIRAPA T/A KAKAPEL INSTITUTE OF**

**INFORMATION & COMMUNICATION TECHNOLOGY.....RESPONDENT**

**AND**

**KENNEDY SHIKUKU T/A ESHIKHONI AUCTIONEERS.....AUCTIONEERS.**

**R U L I N G.**

The **CHURCH COMMISSIONERS OF KENYA** (Registered Trustees), hereinafter referred to as the Applicant filed the notice of motion dated 28<sup>th</sup> November, 2014 seeking directions on whether the auctioneers are entitled to costs and the party to pay such costs if at all. The Application named Albert Ekirapa T/A Kakapel Institute of Information and Communication Technology as the Respondent, and will hereinafter refer to as the Respondent. It also named the auctioneers as Kennedy Shikuku T/A Eshikhoni Auctioneers.

The application is supported by the affidavit of Desmond Mtula sworn on 27<sup>th</sup> November, 2014.

The Respondent filed a replying affidavit sworn by Joseph Vitalis Juma on 15<sup>th</sup> December, 2014 while the auctioneers filed theirs sworn by Kennedy Shikuku on 19<sup>th</sup> January, 2015.

The application was heard on 20<sup>th</sup> January, 2015 and Mr. D.M. Wanyama and Mr.Wanyama advocates for the Applicant and auctioneers respectively submitted.

I have carefully considered the submissions by both counsel, the contents of the supporting and two replying affidavits and find as follows;-

1. That the record shows that the Applicant's suit was struck out with costs on 25<sup>th</sup> July, 2013. It therefore follows that the Respondent's/Defendant's costs was to be paid by the Applicant/Plaintiff herein.
2. That the warrants for attachment and sale were applied for by the counsel for the Respondent though their letter dated 11<sup>th</sup> August, 2014 and duly issued on 12<sup>th</sup> August, 2014.
3. That Jane Onyapidi, Andrew Juma and Stephen Omanyala, against whom the warrants were issued and proclamation dated 27<sup>th</sup> August, 2014 done, have to date not raised any objection to

- the proclamation.
4. That indeed following the proclamation by the auctioneers, the Applicant cleared the Respondents claim. That the Applicants counsel, by letter dated 5<sup>th</sup> November, 2014 addressed to Eshikhoni Auctioneers, asked the Auctioneers to ***“urgently draw your bill of costs to enable us advice our client to settle the same.”***
  5. That the auctioneers have properly issued with the warrants whose authenticity has not been challenged. The auctioneers definitely incurred expenses and the judgment debtor who is the Applicant herein is under a duty to pay such expenses.
  6. That flowing from the foregoing and for avoidance of doubts, the court issues the following directions;
    - a. That Kennedy Shikuku T/A Eshikhoni Auctioneers is entitled to the costs to be agreed or taxed.
    - b. That the agreed or taxed costs of the auctioneers be paid by the Applicant/Plaintiff herein.
    - c. The Applicant/Plaintiff to bear the costs of this application for both the Respondent and the Auctioneers.

It is so ordered.

**S.M. KIBUNJA**

**JUDGE.**

**DATED AND DELIVERED ON 23<sup>RD</sup> DAY OF FEBRUARY, 2015.**

**IN THE PRESENCE OF;.....N/A.....APPLICANT.**

**..... N/A.....RESPONDENT**

**ADVOCATES...M/S. NASIKE WAFULA FOR APPLICANT AND MR. J. V. JUMA FOR RESPONDENT.**

**JUDGE.**