



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

APPEAL NO. 19 OF 2019

MISTRY VALJI NARAN MULJIAPPLICANT

VERSUS

EZEKIEL KIMINZA T/A AUTOLAND AUCTIONEERS.....RESPONDENT

RULING

1. There are two applications before me. The first is dated 6 June 2019 and the second is dated 23 September 2019. The application dated 6 June 2019 is a Chamber Summons said to be brought pursuant to Rule 55 (4) of the Auctioneers Rules. It seeks the following orders :-

(i) That pursuant to leave granted by the Court of Appeal in Mombasa Civil Appeal No. 138 of 2018, this Honourable Court be pleased to set aside the ruling of the taxing master delivered on 9 December 2016.

(ii) That this Honourable Court be pleased to assess the reasonable fees payable to the respondent.

(iii) That the costs of this appeal be provided for.

2. This application is opposed on the grounds inter alia that there does not exist any order in Civil Appeal No. 138 of 2018 granting leave to the applicant to file such application.

3. The second application dated 23 September 2019 seeks the following orders :-

(i) Spent (certification of urgency).

(ii) That the time limited for the applicant to file and serve the respondent with the appeal be enlarged or extended to allow the filing and serving of the same within such time as the court may deem fit.

(iii) That the appeal filed on the 7th of June 2019 be deemed to be properly filed and on record.

(iv) That the costs of this suit be provided for.

4. The dispute herein relates to fees payable to the respondent as auctioneer. He had his bill taxed by the taxing master on 8 December 2016 in the sum of Kshs. 4, 103,445.91/=. Aggrieved by that decision, the applicant filed a “reference” to this court to challenge the same. That “reference” was heard and dismissed by Yano J through a ruling delivered on 6 November 2017. One of the reasons for dismissing the “reference” was the provision of Rule 55 of the Auctioneers Rules, made pursuant to the Auctioneers Act, requiring that where one is aggrieved by the decision of the registrar when taxing an auctioneer’s bill of costs, then he ought to file an appeal against that decision, through the filing of a memorandum of appeal within 7 days of the decision. No memorandum of appeal was filed at all. What was filed was a “reference” and even then, it was filed on 16 March 2017, way out of the 7 day period given to appeal. It was thus dismissed by Yano J. The applicant then filed an appeal to the Court of Appeal through Civil Appeal No. 138 of 2018. The appeal was heard and judgment delivered on 28 May 2019. The Court of Appeal set aside the order of Yano J and held that the applicant was at liberty to move to the High Court for extension of time in the proper manner. These two applications were then filed.

5. I have considered the submissions made by counsel in urging and opposing the applications.

6. First, the application dated 6 June 2019 has completely no place. It is asking this court to assess the fees payable to the respondent, but as held by the Court of Appeal, this court cannot do that without there being an appeal. I need not say anything more on that. In fact, the litany

of errors made by the applicant's counsel is baffling as both Yano J and the Court of Appeal already made it clear what the applicant needs to do. The application dated 6 June 2019 is hereby dismissed with costs.

7. The application dated 23 September is more in line with what the Court of Appeal prescribed for the applicant. This is now an application to enlarge time for filing an appeal. It is said that there is an appeal filed on 7 June 2019 and the applicant wishes to have it deemed properly. I haven't seen this memorandum of appeal for I cannot trace any in the file. Be that as it may, if indeed the applicant filed an appeal on 7 June 2019, I will enlarge time so that it is deemed to be filed within time. If nothing has been filed, then there is liberty to file and serve a memorandum of appeal within the next 7 days. Costs of the application will nevertheless be to the respondent as the applicant ought to have filed his appeal in good time.

8. In summary the application dated 6 June 2019 is dismissed with costs and the application dated 23 September 2019 is allowed to the extent above.

9. Orders accordingly.

DATED AND DELIVERED THIS 10TH DAY OF FEBRUARY 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA