

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 237 OF 2014

MAINA WANJIGI1ST PLAINTIFF/APPLICANT

JANE NDUTA CHEGE2ND PLAINTIFF/APPLICANT

VERSUS

BANK OF AFRICA KENYA LIMITED1ST DEFENDANT/RESPONDENT

GARAM INVESTMENT AUCTIONEERS2ND DEFENDANT/RESPONDENT

PARTIAL RULING

[1] The Applicants are challenging the sale of the suit property namely, L.R No. 3734/1101, IR 55035, Lavington, Nairobi, through a purported auction conducted on 3rd June, 2014, by the 2nd Defendant on behalf of the 1st Defendant in exercise of the chargee's statutory power, for, being unlawful and or un-procedural. I have listened to the counsels and two mind-boggling issues emerged. One; that the issues canvassed relate to a known bidder. And, two; the said bidder is not a party in the suit. The said bidder is the successful bidder according to the Respondents and his name is Mr MICHAEL MATU. Despite repeated warning by counsel for the Respondents that Mr MICHAEL MATU is a necessary party but had not been joined in these proceedings, counsel for the Applicants seemed not to see any necessity of applying for the joinder of the said known bidder. Instead, he tried to justify the omission by saying it was not fatal. Surprisingly, the same counsel for the Applicants in trying to distinguish the applicability of the case of **SAMUEL KIMANI WAAINAINA v HFCK [2006] eKLR** stated categorically that the issues herein are among bidders. I have taken time to carefully consider the real issues in controversy herein, and came to the conclusion that the presence of Mr MICHAEL MATU is absolutely necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the application herein. The position I have taken is not in any way intended to assist any party in the proceedings, but rather it is out of the constitutional desire to serve substantive justice. I am also guided by order 1 of the Civil Procedure Rules which grants the Court power to order for addition of parties on its motion where the presence of such party is necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. I, therefore, order the name of MICHAEL MATU to be added in these proceedings. He shall be served with the plaint and the application herein within the next 14 days. And on such service, he shall enter appearance and file his reply to the application within 7 days thereof. I will thereafter, with the advantage of his response render a ruling resolving all the issues in the application. It is so ordered.

Dated, signed and delivered in court at Nairobi this 25th day of September, 2014

F. GIKONYO

JUDGE

In the presence of:-

Alex court clerk

Angaya for Mr. Menye for plaintiff

M/s Mate for defendant