



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
MISC. APPLICATION NO. 135 OF 2013

NASHON KERATI MURIRI

T/A MURIRI AUCTIONEERS.....APPLICANT

VERSUS

THE O.C.S. ISIBANIA POLICE STATION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. This is an application by Nashon Kerati Muriri in person but trading as Muriri auctioneers. He is the applicant. The notice of motion is dated 6th day of July, 2014. He brings this application under orders 50 rule 5, also under 51-subrule 1 of Civil Procedure Act, Cap 21, as revised on 2010 of the laws of Kenya. He also cites Auctioneers Act No. 5 of 1996 and Auctioneers Rules 7a, b and c, rule 55 sub-rule 3 and Amendment of Auctioneers rules 2009 and other enabling provisions of the law.
2. His application is for the following orders:
 1. *For the court for enlargement of time to enable him to file an appeal out of time.*
 2. *And the cost of this application*
 3. The grounds upon which he relies are as here below:-
 - a. *That on 13th October, 2013 the applicant was appointed by Kehancha Honourable court to conduct public auction for unclaimed properties at Isibania police station.*
 - b. *That on 8th November, 2013 I proclaimed the list of items which were supposed to be disposed off.*
 - c. *That on 16th November, 2013 the applicant conducted the public auction at 11.00a.m. outside Isibania police station.*
 - d. *That the said public auction realized kshs. 300,100 from which he deducted their auctioneer fees of kshs. 103,910/-.*
 - e. *That on 16th November, 2013 the applicant deposited in court, Account No. 1106463455, some kshs. 295,190.*

- f. *That however on 2nd Senior Resident Magistrate, Kehancha law courts, MR. C.M.Kamau decided and delivered the ruling in the applicant's absence.*
- g. *That the auctioneer be and was ordered to deposit all the proceeds of the public auction held on 16th November, 2013.*
- h. *That on 6th March 2013 the applicant was duly informed of the orders of the court.*
- i. *That then applied for certified copies of the ruling which copies were given to him on the 11th June, 2014.*
- j. *There because the Senior Resident magistrate Mr. C.M. Kamau delivered a ruling in the applicant's absence and without notice, the applicant could then file an appeal against the ruling within time when he was not in fact aware of the ruling.*
- k. *That therefore the applicant pray that this honourable court for enlargement of time to enable him to file an appeal against the ruling of Senior Magistrate Hon. Mr. C.M. Kamau out of time.*

4. In his supporting Affidavit, Nashon Kerati Muriri, has attached several annexures as to the veracity of what he has stated in his notice of motion. The salient annexures are marked as here below:

1. *NKM2- a copy of notification of sale, parag.3 of Supporting Affidavit.*
2. *NKM3 & 3A- copy of newspapers cutting, of parag. 4 thereof.*
3. *NKM4 & 4a- copy of the forwarding letter dated 25th November, 2013*
4. *NKM5 – copy deposit slip to account No. 1106463455*
5. *NKM6- copy of the ruling.*

5. That the honourable court ruled on 2nd December, 2013 without realizing that in fact the money was deposited on 26th November, 2013.

6. The court has noted that service was made on the 1st Respondent on 9th of September, 2014. The said affidavit of service is dated 10th September, 2014. There is also an earlier affidavit of service served on the O.C.S. Isibania police station on 9th July, 2014.

7. The effect of the service is therefore, the Respondents have not entered an appearance and thus the applicant's submission remains uncontroverted.

8. Therefore having given reasons for this application. It is only fair that the applicant's application is allowed in terms of the two prayers:

1. *For enlargement of time to file an appeal out of time and*
2. *Costs to the applicant.*
9. *Orders accordingly.*

Ruling dated and delivered at KISII this 22nd day of September, 2014

C.B. NAGILLAH,

JUDGE

In the presence of:-

Nashon Kerati applicant

No representation to 1st respondent

No representation to 2nd respondent

Edwin Mongare court clerk.