

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

HIGH COURT CIVIL NO: 22 OF 2005

RUTH NJERI ZEYHLE.....PLAINTIFF

VERSUS

EBEHARD ZEYHLE.....DEFENDANT

RULING

The applications for determination are dated 3rd November 2011 and 18th November 2011.

The Motion dated 3rd November 2011 is by Eberhard Zeyhle. He seeks that the court do direct that evidence be taken of the work done by Mathias Mboya Maitha t/a Yambo Merchants and Auctioneers with respect to the sale of **LR Nos. 14971/6** and **14971/9**. That dated 18th November 2011 is by Ruth Njeri Zeyhle seeking stay of taxation of a bill of costs filed by the said Yambo Merchants and Auctioneers pending hearing and determination of the application, and proof that the said Yambo Merchants and Auctioneers rendered services as an agent resulting in the sale of the properties mentioned above.

This suit was commenced by way of Originating Summons taken out by Ruth Njeri Zeyhle under **Section 17** of the Married Women's Properties Act 1882 against her estranged husband, Eberhard Zeyhle seeking division of matrimonial property. The parties agreed by consent to liquidate the assets and share the proceeds equally. That was done. The current dispute arises from that process. Mr. Mathias Mboya Maitha trading as M/s. Yambo Merchants and Auctioneers came forward claiming that he had facilitated the sale of **LR Nos. 14971/6** and **14971/9** and was entitled to fees or commission for the services he had rendered. He then filed a bill for taxation. Both Ms. and Mr. Zeyhle dispute that the said Mr. Mboya played role in the said sales and assert that he is not entitled to the fees or commission that he is claiming. It is on this basis that they ask that evidence be taken from Mr. Mboya on the services that he alleges he offered to facilitate the said sale.

The application was served on Mr. Mboya, who swore an affidavit on 17th January 2012 in reply. He has attached to his affidavit three statutory declarations, one by himself and the other two by a person he calls his agent and the other by the person who bought the property in question. He asserts that he sourced the buyer, through an agent, and it the said buyer who eventually bought the said two properties. His other argument is that the matter of taxation of bills is the province of the Deputy Registrar, and that the matter should be heard before the Deputy Registrar.

The dispute revolves around the taxation of a bill by a person who alleges to be an auctioneer. Taxation of bills in the High Court practice is the responsibility of the Deputy Registrar. Any issues that arise in connection with the said bill are for determination by the Deputy Registrar – whether they touch on the auctioneer's right to file the bill or on whether the services rendered fell within the realm of the Auctioneers Act or whether evidence should be taken to justify the bill. The matter should be referred to a Judge only on appeal from a decision of the Deputy Registrar.

It is not for me to determine the two applications dated 3rd November 2011 and 18th November 2011. I hereby refer them to the Deputy Registrar for hearing and determination.

DATED, SIGNED and DELIVERED at NAIROBI this 12th DAY OF July, 2013.

W.M. MUSYOKA

JUDGE