



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
MISC. CIVIL APPL. NO 362 OF 2006

BETWEEN

REPUBLIC APPLICANT

AND

THE AUCTIONEERS LICENSING BOARD RESPONDENT

EX-PARTE

DUNCAN MUGAMBI T/A WRIGHT AUCTIONEERS

AND

EMILY WAMBUI KABUTHU INTERESTED PARTY

JUDGMENT

1. The matter before the Court is a Notice of Motion dated 20th July 2006 in which the *ex parte* applicant, an auctioneer, seeks orders of judicial review in respect of a decision of the Auctioneers Licensing Board dated 30th May 2006 arising from a complaint lodged by the interested party. The auctioneer was reprimanded and fined the sum of Kshs.30,000/= to be paid within 30 days. In default of payment, he would stand suspended.
2. The material ground upon which he seeks relief is that he was not notified in good time of the hearing scheduled for 16th May 2006 and he only received the notice on 19th May 2006 after the matter had been heard. He therefore claims that his right to natural justice was violated.
3. Since this matter was filed, the respondent, though served with process, has not filed any response nor appeared to oppose the application. The interested party opposes the application by her replying affidavit sworn on 13th September 2006 in which she depones that the notice was sent by registered post which is a mode of service recognised and invoked by the Board and which is presumed to be effective hence the *ex-parte* applicant was properly served. Further that the date was taken in the presence of both parties and their counsel and the posting of the notice was as a matter of cause. Her argument is that the notice was duly served in the circumstances.

4. I have considered the material before me and in the absence of a deposition on behalf of the Board or a copy of the proceedings, I am unable to say definitely that the date was taken by consent of the parties. Further, the notice annexed to the interested party's replying affidavit shows an acknowledgement of the hearing notice by the auctioneer on 19th May 2006. There is also no evidence the notice having been sent by registered post.

5. In the circumstances, I allow the Notice of Motion dated 20th July 2006 and I issue an order of certiorari removing to this Honourable Court the decision of the Auctioneers Licensing Board dated 30th May 2006 made against the *ex parte* applicant and it is hereby quashed. The respondent shall bear the costs.

DELIVERED and **DATED** at **NAIROBI** this 7th August 2013

D.S. MAJANJA

JUDGE

Mr Onyango instructed by A. I. Onyango and Company Advocates for the *ex-parte* applicant.

Mr Kinga instructed by Khaminwa and Khaminwa Advocates for the interested party.