



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 367 of 2000**

**WILLESDEN INVESTMENTS LIMITED .....PLAILNTIFF**

**VERSUS**

**KENYA HOTEL PROPERTIES LTD. .... DEFENDANT**

**R U L I N G**

By an application by a notice of motion dated 28<sup>th</sup> May, 2010, the decree-holder herein applies for orders, *inter alia*, that the Court do set aside the warrant of attachment issued to Keysian Auctioneers and the auctioneer, Muganda Wasulwa, trading as Keysian Auctioneers be summoned and cross-examined on how he executed the warrants without a physical inspection of the goods allegedly proclaimed. When the application first came for *ex parte* hearing under a certificate of urgency on 28<sup>th</sup> May, 2010, the Court directed that the auctioneer be summoned for cross-examination during the *inter partes* hearing of the application.

The application duly came for *inter partes* hearing on 17<sup>th</sup> June, 2010. Mr. Gichuhi appeared for the Applicant while Mr. Nowrojee appeared with Mr. Athok for the Respondents. Mr. Nowrojee argued that the auctioneer should not be cross-examined as there were already objection proceedings. Secondly, he submitted that the issue of what the auctioneer did in the hotel was an issue in the objection proceedings. It was his further contention that where there is a pre-determined process for determination of certain issues, that process should be followed. In this matter, he said, there was a prescribed for determination of any alleged wrongful execution. He therefore submitted that the auctioneer should not be cross-examined at this stage.

On that issue, Mr. Gichuhi argued that the Court has jurisdiction to discipline auctioneers and the Court can only discipline an auctioneer upon finding, on evidence, some element of misconduct. He further contended that the Court has to determine whether the proper procedure was followed as an auctioneer is an officer of the Court. It was his further contention that there were no objection proceedings existing in this file and urged the Court not to fall into the trap of making findings on matters which might have to be determined on objection proceedings. He therefore urged the Court to allow the auctioneer to be cross-examined because of the very serious allegations levelled against him in the proclamation procedure.

I have considered the rival submissions by Counsel. I agree that some serious allegations have been made against the auctioneer in this matter. I further agree that an auctioneer is a person who has been appointed by the Court and is therefore an agent of the Court. **Section 23 of the Auctioneers Act, 1996**, requires a licensed auctioneer at all times to act in a manner befitting an officer of the Court and to ensure that his employees, servants or agents act in like manner. In that context this Court will not countenance any acts of impropriety on the part of any of its officers with impunity.

In the instant case, I note that the person now complaining is not the one from whom the alleged goods were proclaimed, but the decree-holder. The person who is adversely affected by what is alleged to have taken place is not the decree-holder but the objector. In these circumstances, I find that the person with the requisite *locus* to institute a complaint about the mode of attachment is not the person describing itself as the Defendant/decreed-holder, but the objector proper. For that reason, I hold that the auctioneer need not be cross-examined at this stage, and therefore, his cross-examination is hereby stayed, pending an appropriate application to that effect objector himself, who is the party

adversely affected.

Orders accordingly.

**Dated and delivered at Nairobi** this 28<sup>th</sup> day of June, 2010.

**L. NJAGI**  
**JUDGE**