



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL APPEAL NO. 147 OF 2001**

**SOUTH NYANZA SUGAR COMPANY LIMITED ..... APPELLANT**  
**-VERSUS-**  
**ALFRED SAGWA MDEIZI T/A PAVE AUCTIONEERS ..... RESPONDENT**  
**JUDGMENT**

***(Being an appeal from the Senior Principal Magistrate at Migori Civil Suit No. 135 of 1999 by C.N.O Ateya SPM)***

This appeal emanates from a ruling and order of the Senior Principal Magistrate's court at Migori (C.N.O Ateya presiding). The said ruling was in respect of an application by way of Notice of Motion dated 19<sup>th</sup> February 2001 and filed in court on 20<sup>th</sup> February 2001. The application was brought pursuant to the provisions of section 3A, 34, 63e, 91(1) & 80 of the **Civil Procedure Act**; 9 & 22 of the Auctioneers Act, the Auctioneers rules 1997, Orders L rules 1-15, XXI rules 6 of 22 and XLIV of the **Civil Procedure Rules**. The prayers sought in the said application were that:

- 1. This application be heard expeditiously and on priority, preferably on a day to day basis and in the first instance it be heard ex-parte for reasons of urgency.***
- 2. This court be pleased to grant interim orders of stay of execution of this courts orders issued against the applicant/Defendant on diverse dates, in favour of the respondents or his representatives, and of warrants of attachment and sale issued to Pave Auctioneers, Pave Auctioneers and Moco Auctioneers on diverse dates in this suit which are still pending and or intended to be executed, pending the hearing and eventual disposal of this application***
- 3. The alleged decree of this court dated 25<sup>th</sup> August, 2000, and the warrants of attachment and sale issued by this court on 18<sup>th</sup> December, 2000, be declared null and void and the same be set aside.***
- 4. The attachment carried out by Moco auctioneers of Post Office Box Number 2790 Kisii pursuant to the said warrants of attachment and sale issued to them on 18<sup>th</sup> December, 2000, on instructions of Pave auctioneers be declared null and void.***
- 5. The resultant auctioneers bill of costs filed by Moco Auctioneers pursuant to the attachment carried out against the goods of the applicant by virtue of the warrants issued by this court and dated 18<sup>th</sup> December 2000 for assessment be struck out and the resultant assessment of auctioneers charges in the sum of Kshs. 600,010 all in civil case numbers: 135, 152, 147, 239, 226, 223, 149, 148, 222, 157, 182, 203, 156, 207, 217, 151, 205, 162, 160, 159, 163, 158, 224, 155, 216, 214 & 161 all of 1999 between various plaintiffs/decree holders and the applicant, South Nyanza Sugar Company Limited be set aside.***
- 6. The court be pleased to review its order dated 1<sup>st</sup> February 2001 ordering the applicant, south Nyanza Sugar Company Limited as a liable to pay Auctioneers charges to Pavement Auctioneers and the attachment carried out by Pavement Auctioneers in this suit on 13<sup>th</sup> October, 2000, 27<sup>th</sup> October, 2000 and on 5<sup>th</sup> November, 2000 be nullified.***
- 7. The Auctioneers bill of costs filed by Pavement Auctioneers of Box 561 Suna Migori and due for assessment by the court on the 22<sup>nd</sup> of February, 2001 be struck out.***
- 8. The honourable court be pleased to stay further assessment of auctioneers bills of costs and charges in this suit.***
- 9. The court order dated 21<sup>st</sup> November, 2000 be upheld and given effect.***
- 10. The court be pleased to order compliance of the consent order dated 11<sup>th</sup> August, 2000, which***

*consent order inter alia provided that the attached Motor vehicles were to be released to the applicant upon payment of 1<sup>st</sup> instalment of the decretal sum which instalment was paid.*

*11. The applicants motor vehicle registration numbers*

*i. KAB 114B Commet Tipper*

*ii. KAJ 398 S, Mitsubishi tipper*

*iii. KAA 953P, Loading Winch*

*iv. KAA 934P, Haulage Tractor and*

*v. 27 bags of fertilizer attached by Pave Auctioneers on 10<sup>th</sup> April, 2000 and subsequently by Pavement Auctioneers on diverse dates be released to the applicant forthwith and unconditionally in any event.*

*12. The court be pleased to award to the applicant such reliefs as are due pursuant to the provisions of Section 91 of the Civil Procedure Act.*

*13. The attachment carried out by Pave Auctioneers on the 10<sup>th</sup> April, 2000, be declared null and void and no effect, legal or otherwise.*

*14. The sum of monies amounting to Kshs. 43,000/= already paid to Pave Auctioneers by virtue of the attachment carried out on 10<sup>th</sup> April, 2000 and on 5<sup>th</sup> August, 2000, and the other subsequent and or prior attachments be refunded to the applicant with interest at the rate of 24% per annum from the date of payment till re payment in full.*

*15. Costs of this application be provided for.”.*

Prayers were 1, 2 & 11 of the Motion were granted at the interlocutory stage and were thus not among those for determination in the ruling. Those left for determination by the court in the ruling were thus prayers 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14 & 15.

The grounds which were urged in support of the said motion were set out in the body of the motion. Those grounds were:

*“1. In the interest of justice and as remedy to the obvious and to prevent further abuse of court process evidenced herein, the court has jurisdiction to so order.*

*2. The applicant has suffered and stands the risk of continued suffering of great loss and damage unless the orders sought are not granted.*

*3. On 10<sup>th</sup> April, 2000 and on 5<sup>th</sup> August, 2000 when Pave Auctioneers allegedly carried out attachment in this suit it had no valid auctioneers licence and hence lacked capacity to execute court warrants.*

*4. The attachments so carried amounted to a commission of criminal offence under section 9 of the Auctioneers Act, act no. 5 of 1996.*

*5. No costs are payable as auctioneers charges as a result of criminal acts as pave auctioneers are not entitled to any costs for their unlawful and illegal attachment.*

*6. There is no decree of this court dated 25<sup>th</sup> August, 2000 in this suit which could lawfully be executed and warrants issued on as a decree is issued only once and bears the dated of judgment which was 13<sup>th</sup> January, 2000.*

*7. Pave Auctioneers does not have jurisdiction to execute warrants in Migori District and more particularly warrants issued against the applicant/defendant by this court and may only execute warrants in Kisumu and Kakamega Districts where it has been licensed to operate.*

*8. Auctioneers charges can only be recovered in accordance with the provisions of section 22 of the Auctioneers Act, Act No. 5 of 1996 which has not been complied with in this suit.*

*9. A court does not issue orders in vain and once an order has been issued it ought to be complied with.*

*10. Payment in excess of Kshs. 43,000/=, had been made to Pave Auctioneers by virtue of the illegal attachment carried out by it in this suit on diverse dates. Pave Auctioneers, Pavement Auctioneers and Moco Auctioneers are not parties to this suit and lacks capacity to move, address and or obtain adverse orders against the applicant from this court in this suit.*

*11. All the Applicants, orders, bills of costs, audiences, warrants of attachment and sale obtained by Pave Auctioneers, Pavement Auctioneers and Moco Auctioneers in this suit without involvement of the respondent/plaintiff decree holder in execution herein amounts to abuse of the process of court and are illegal, null and void.*

*12. Only a decree holder who is a party to a suit can commence and carry on execution processes and proceedings against a judgment debtor and Pave Auctioneer is not a party.*

*13. The motor vehicle and the fertilizers since 10<sup>th</sup> April, 2000 held by Pave Auctioneers are so held*

*unlawfully, illegally and in total breach and disregard of orders recorded on 11<sup>th</sup> August, 2000 by consent between the advocates of the plaintiff/respondent and the applicant which consent orders were on condition.*

*14. In so far as the order to release the Motor vehicles and the attached fertilizers remain uncomplied with, Pave Auctioneers were not entitled to file any bill of costs for assessment.*

*15. An Auctioneer, instructed by the court to execute warrants of court has to do so personally and does not have powers to delegate and in the circumstances cannot-  
Instruct another auctioneer to execute for his costs on his behalf and such delegation amounts to abuse of court process.*

*16. Costs of an auctioneers due and payable and arising from execution pursuant to an order of court must be recovered by the auctioneers himself without delegation.*

*17. Warrants obtained by Moco Auctioneers and Pavement Auctioneers to recover cost/auctioneers charges for and on behalf of Pave Auctioneers are in the premises illegal in the premises are not payable.*

*18. The court vide letter dated 4<sup>th</sup> August, 2000, from Auctioneers Licensing Board copied to it and written to the proprietor of Pave Auctioneers was duly informed of Pave Auctioneers license being revoked and has since then been well aware of the fact.*

*19. In any event the sum of Kshs. 2,024,000/= paid by the applicant/defendant on 31<sup>st</sup> July, 2000 and the sum of Kshs. 1,760,000/= paid by 19<sup>th</sup> December, 2000 to Pave Auctioneers in civil case nos. 135-241 all of 1999 which this suit is part of is reasonable fair and adequate in the event that its found that he is entitled to Auctioneers charges.*

*20. The applicant/defendant is entitled to the remedies provided for in section 91 of the Civil Procedure Act as a result of and arising from the illegal unlawful, unnecessary and oppressive attachments by Pave Auctioneers, Pavement Auctioneers and Moco Auctioneers.*

*21. The consent order entered into between M/S Ochillo & Co. advocates and M/S Nyatundo & Co. Advocates on behalf of Moco Auctioneers was so entered into in error and without instructions from the applicant.*

*22. The ruling made by this court on 1<sup>st</sup> February, 2001 whereat it was ordered that the applicant is liable to pay auctioneers charges to pavement auctioneers whereas the said pavement Auctioneers do not have jurisdiction to execute warrants in Migori district contains an apparent error on the face of the record and hence ought to be reviewed as no appeal has since been preferred against it.*

*23. There is new evidence on Pavement Auctioneers jurisdiction to execute warrants which they executed against the applicant which could not be produced at the time when the order was made.*

*24. The applicant is entitled to refund of Kshs. 43,000/= paid to Pave Auctioneers pursuant to execution and attachments in this suit.”.*

The application was further buttressed by the supporting affidavit sworn on behalf of the appellant by one, **Gabriel Ouma Otiende**, the then acting company secretary of the appellant. That affidavit and the annexures thereto merely expounded and elaborated on the grounds in support of the application aforesaid. A brief background of the history and or the circumstances leading to the application is pertinent.

Sometimes in 1999, some 88 plaintiffs including one, **Geoffrey Anyango Oroko** filed various suits in the subordinate court at Migori against the appellant, seeking damages for personal injuries which each one of them sustained following a road traffic accident while travelling aboard motor vehicle registration No. KUC 979 as employees of the appellant. The vehicle had been hired from **Asego Stores Ltd** to ferry these people who were employees of the appellant as cane cutters and among them was the said plaintiff. Those suits were heard by the subordinate court at Migori and Judgments entered in favour of those claimants and various awards in terms of general and special damages were made to each plaintiff against the appellant in the 88 suits. It would appear that decrees ensuing therefrom were not satisfied by the appellant which forced the advocates on record for the claimants in those suits namely, **Kerario Marwa & Co. Advocates** as well as **Khan & Katiku Advocates** to commence execution proceedings.

On 17<sup>th</sup> March, 2000 warrants of attachment and sale were issued in each of the said suits to **Pave Auctioneers** whose proprietor was one, **Alfred Sawe Mdeizi**. However, on 22<sup>nd</sup> March, 2000 Pave auctioneers license was revoked by the Auctioneers Licensing Board and a communication to that effect made to the respondent. By then, however the said warrants had already been issued to him. On 14<sup>th</sup> April, 2000 much as it was already aware about its licence having been revoked the said auctioneers still

went ahead and attached the appellant's motor vehicles in purported execution of the decrees as aforesaid. Sometimes in June, 2000, 27<sup>th</sup> July, 2000 and 5<sup>th</sup> August, 2000 respectively, the same auctioneers were still on the roll. They were still executing some of the decrees. On 11<sup>th</sup> August, 2000 a consent order was recorded between the firm of **Kerario Marwa & Co. Advocates** acting for the plaintiffs and **M/s Ochillo & Company Advocates** then acting for the appellant in terms that the aggregate total of the decretal sums was to be paid in 4 instalments. It was further agreed that on payment of the 1<sup>st</sup> instalments all the attached vehicles and properties belonging to the appellant would be released to the appellant. Following the attachments on 4<sup>th</sup> April, 2000, June 2000, 26<sup>th</sup> July, 2000 and 5<sup>th</sup> August 2000 various sums of money to wit Kshs. 43,000/- per file in the 88 cases were paid to the respondent by the appellant as their charges. On 13<sup>th</sup> October, 2006 another attachment was levied on the appellant this time by Pavement Auctioneers whose proprietor was one, **Nathan Ondego** on the instructions of Pave Auctioneers. This was with a view to recovering auctioneers charges due to the said Pave Auctioneers. Those charges were assessed by court on 25<sup>th</sup> August, 2000 pursuant to an attachment which was levied on 5<sup>th</sup> August, 2000. That attachment was according to the appellant illegal as Pave Auctioneers had been deregistered and no costs were therefore recoverable on their behalf. In any event, Pavement Auctioneers had no jurisdiction to execute the decrees in Migori District, their jurisdiction being limited to Kisumu and Kakamega Districts. Because of all the foregoing anomalies, the appellant filed the application whose ruling is the subject of this appeal.

The application was opposed on the ground that the allegations had no factual basis, was motivated by malice, that though, Pave auctioneer's license had been revoked, they had initiated judicial review proceedings which stayed the revocation, there was no illegality in the execution of the warrants and finally that they never delegated the execution of the warrant to Pavement Auctioneers nor Moco Auctioneers.

The learned magistrate having carefully considered the application and rival oral submissions reached the verdict thus:

*"I have gone through the submissions by both counsels with all the care and attention to the very minute details so as to bring out issues for careful determination. To begin with I am grateful to both counsels for their stamina and determination in bringing out all the opposing views and the favourable points on behalf of their clients. This goes a long way in building a body of case law for further development of the law if only any one of these two parties is encouraged to take up this ruling upto the high court for the confirmation or otherwise of the findings of this court which I am about to set out down here shortly. I appreciate the fact that this ruling affects 88 suits which are in a series and the same had been protracted for a long time and must be brought to an end one way or the other. The fights of parties in the present times are not the primitive gladiator jungle duels but the civilized and mature combats with in the rule of law. As it is written in the Good book. Deut. Chapter 25: 1-3. When men have a dispute, they are to take it to court and the judges will decide the case, acquitting the innocent and condemning the guilty. If the guilty man deserves to be beaten, the judge shall make him lie down and have him flogged in his presence with the number of lashes his crime deserves but he must not give him more than forty lashes. If he is flogged more than that your brother will be degraded in your eyes. You might wonder what is the relevance of this precept primitive animal justice got to do with serious civil litigation in a modern society like ours! I hasten to state that in the present application in this suit it is very relevant. This applicant and the respondent have been fighting over this matter for a very long time and without being checked it could defiantly degrade one or the other of the parties. Since they brought the matter to court. The court sitting as a judge must ensure that neither party leaves this seriously bruised and degraded as that would mean giving that party more than 40 lashes to the detriment of the divine injunction. So each party must be prepared for what is to come. I wish also to add that this is not the time to open old wounds that each party may have been inflicting on each other before they come to court with the present application. I now come to Pave Auctioneers. After going through the submissions by both advocates and carefully perusing the provisions of the Auctioneers Act 1996 and particularly sections 18 and 24. I am satisfied that the two sections provide the revocation of an auctioneers licence and complaints against auctioneers. In fact the provisions of section 24 should have come earlier than those of section 18. I am satisfied that section 24 provides for the substance that forms the basis upon which if proven, an auctioneers licence may be revoked following the procedure laid down under section 18. Justice is not in the substance of the law, but justice is in the procedure adopted at arriving at what the substance of the law*

*provides. So in the present case and with all due respect to both learned counsels. I am satisfied that for justice and justice only to be seen to have been done by board was supposed to have strictly complied with the relevant mandatory procedure laid down by the provisions of section 18 of the act as submitted by counsel for the respondents. There is no shred of evidence to confirm on record that the auctioneers licensing board complied with the provisions of section 18 of the act in respect of Alfred S. Mdeizi t/a Pave Auctioneers. This complied (sic) with the superior's court orders obtained by Alfred S. Mdeizi suspending the actions of the board reinforces the status of Alfred S. Mdeizi t/a Pave Auctioneers. I am therefore satisfied that Alfred S. Mdeizi t/a Pave Auctioneers, still an auctioneer proper and had a clean bill of health to trade as Pave Auctioneers as there is nothing to show that his licence was revoked according to the law as prescribed. There are no fatal injuries which have been unfllicted on him by the auctioneers licensing board by the annexetures on record was suffering under the mistaken impression that they had dealt a death blow to Alfred S. Mdeizi by purportedly revoking his licence, that was a bad dream on their part as Alfred S. Mdeizi is still alive and trading as Pave Auctioneers under the act. Now what does this mean under the present circumstance? It means that in respect of this application by August, 2000 when Alfred S. Mdeizi was executing warrants in these 88 cases he was duly licenced and therefore the payments made to him as auctioneers charges by the applicant cannot be refunded to the applicant by Pave auctioneers as they were properly and lawfully paid to them. Pave Auctioneers was legally entitled to receive those payments.*

*Coming to Pavement Auctioneers it is clear from the provisions of the act cited by both counsels and the rules made thereunder that they are not licenced for Migori but for Kakamega and Kisumu. Therefore they had no jurisdiction to execute any warrants in Migori and they are therefore entitled to no payment from the applicant. It is on record that the respondent was paid in full all his costs. I therefore rule that Moco Auctioneers were also not entitled to any payments at all and the consent orders made as to their costs are therefore vacted and set aside and should not be enforced by any party. The party who is genuinely aggrieved as to any payments lawfully due to him should make attempts at recovery through an independent suit. I therefore further order that if there is any auctioneer involved in this application who is holding any property of the applicant in any of the 88 matter in this series do release the property back to the applicant unconditionally.*

*I am afraid this has been the longest of any rulings I have delivered in this court, but it was for the ends of justice to bring this acrimonious protracted matters to an end. As there are orders favourable to either party and unfavourable to either party in the body of this ruling and looking at the history of these case the ends of justice shall be met by each party bearing its own costs.*

*Right of appeal 28 days.”..*

*Aggrieved by the ruling, the appellant lodged this appeal setting out 7 grounds thereof to wit:*

*“1. The learned trial magistrate erred in law and in fact in failing to render a decision on all and on each and every of the prayers contained in the Notice of Motion dated 19<sup>th</sup> February 2001 and filed in court on the 20<sup>th</sup> day of February 2001 in this suit and in 87 other civil suits above stated, and in failing to decide in each and every issue raised and presented before him in the said application according to law.*

*2. The learned trial magistrate erred in both law and in fact in holding that one Alfred Sagwa Mdeizi trading as Pave auctioneers the respondent herein was at 5<sup>th</sup> august 2000 and still is, as at now a licensed auctioneer, within the meaning of the Auctioneers Act 1996, despite written communication vide letters dated 4<sup>th</sup> April 2000 and 7<sup>th</sup> February 2001 from the Auctioneers Licensing Board put in evidence and canvassed before him, to the contrary.*

*3. The learned trial magistrate erred in both law and in fact in holding that the appellant South Nyanza Sugar Company Limited is not entitled to a refund, from Alfred Sagwa Mdeizi t/a Pave Auctioneers, the respondent herein of the sum of Kenya shillings 43,000/= together with interest at the rate of 24% per annum from the date of payment, paid to the said Alfred Sagwa Mdeizi in this suit and on each and every of the other 87 suits above stated as auctioneers charges following attachment carried out by the said Alfred Sagwa Mdeizi on 10<sup>th</sup> April, 2000 and 5<sup>th</sup> August, 2000 in this suit, and in the said 87 other suits in these series as he did, after the said Alfred Sagwa Mdeizi's Auctioneers License had been revoked by the Auctioneers Licensing Board on the 22<sup>nd</sup> March, 2000 and notice of such revocation of his license communicated to him, the said Alfred Sagwa Mdeizi, and to the court vide letter dated 4<sup>th</sup> April, 2000 put in evidence before him.*

*4. The learned trial magistrate erred in both law and fact in not holding that the attachment carried*

*out by the respondent, Alfred Sagwa Mdeizi t/a Pave Auctioneers first on 10<sup>th</sup> April, 2000 and again 5<sup>th</sup> August, 2000 of the appellant's goods and motor vehicles KAJ 396S Mitsubishi tipper, KAB 114B Comet Tipper, KAA 952P Loading winch, KAA 934P Haulage Tractor and 27bags of fertilizer in this suit and in the other 87 suits and the withholding of the same since 10<sup>th</sup> April, 2000 by the said Alfred Sagwa Mdeizi t/a Pave Auctioneers was unlawful, illegal, null and void for want of valid Auctioneers' License on the part of the said Alfred Sagwa Mdeizi the respondent herein, issued by the Auctioneers Licensing Board in accordance with the Auctioneers Act, 1996.*

*5. The learned trial magistrate erred in both law and in fact in refusing to award damages as provided for by the provision of section 26 of the Auctioneers Act, 1996, and section 91 of the Civil Procedure Act to the appellant against the respondent and in holding that such damages can only be recoverable by the filing of a fresh independent suit, contrary to the express provisions of section 34 and 91 of the Civil Procedure Act.*

*6. The learned trial magistrate erred in both law and in fact in basing his decision on morals instead of and as opposed to justice, fine legal principles, law and statutory provisions and in holding that there was no evidence on record to show that the respondent Alfred Sagwa Mdeizi's Auctioneers License had been revoked by the Auctioneers Licensing Board.*

*7. The learned trial magistrate erred in both law and in fact in not awarding costs of the application in this suits and of the other applications in the 87 other suits to the appellant.*

When the appeal came up for directions, the respondent was absent though served. Among directions sought was that the appeal be canvassed by way or written submissions. Though the respondent was served severally with the hearing notice he failed to attend the hearing of the appeal or file his written submissions. This appeal has thus been heard as uncontested.

It is the appellant's case that since the respondent's licence had been revoked and notice of such revocation communicated to him, he had no capacity in law to execute court warrants by attaching the appellant's assets. Therefore the purported executions aforesaid were illegal, null and void. He was not entitled to any payment on account of auctioneers fees or charges.

If indeed the attachment was lawful and at the time and, the respondent had a valid auctioneers licence as claimed, nothing could have been easier than for the respondent to produce a copy of his said licence before the court. Section 9 of the Auctioneers Act is very clear. It provides that nobody shall carry out auctioneers business unless he holds a valid auctioneers licence issued by the Auctioneers Licensing Board. The lack of a valid auctioneers licence by the respondent is further buttressed by the letters dated 4<sup>th</sup> April 2000 and 7<sup>th</sup> April respectively from the Auctioneers Licensing Board. If as the respondent wanted the court to believe that he had obtained an order of stay, did he ever serve the same on the said Auctioneers Licences Board. If so why was it even difficult for him to obtain a letter from the board countermanding its earlier two letters aforesaid? Bearing the foregoing in mind I am satisfied that there was ample material before the court which could have enabled the subordinate court to adequately address prayers 3, 13 & 14 of the motion which was before him. The respondent did not in my view have a valid auctioneers licence to allow him to transact business. That being the case he had no business executing the warrants with the resultant costs that he was paid.

No doubt the appellant suffered losses and damages when its motor vehicles and other properties were attached and kept illegally by the auctioneers with effect from 10<sup>th</sup> April, 2000 until they were released by an order issued on 22<sup>nd</sup> February, 2001. Section 34 of the **Civil Procedure Act** strictly bars the filing of separate proceedings to determine issues that emanate or arise from execution of decrees in a suit. Without obvious regard to these mandatory provisions of the law the learned magistrate held that the appellant, if he sought to recover any monies from any of the parties to the application had to bring or initiate independent proceedings. In the face of the clear provisions of Section 34 of the **Civil Procedure Act**, this conclusion was clearly erroneous.

Though the learned senior principal magistrate held that there was no evidence on record which the appellant tendered to show that the respondents licence had been revoked, this holding again was erroneous. The respondent never produced any auctioneers license to court. There was evidence though that his license had been revoked courtesy of the letters from the Auctioneers Licencing board. What other evidence did the learned magistrate require the appellant to produce? The magistrate seem to fault the board for revoking the licence without complying with Section 18 of the Act. This was not a matter before him. In any event he had no jurisdiction to determine whether the Auctioneers Licensing Board had properly and in law revoked the respondents auctioneers licence. That issue fell for determination by

another form.

Yes, the respondent in his replying affidavit deponed that he had been issued with a court order dated 14<sup>th</sup> April, 2000 staying what had gone on at the Board on 22<sup>nd</sup> March, 2000. That may well be so. However I do not think that a court order issued on 14<sup>th</sup> January, 2000 had the effect of validating illegal acts carried out on the 10<sup>th</sup> of April, 2000 when the respondent purported to execute the decrees.

Further more Section 12 of the Auctioneers Act specifically provide that only a holder of a valid auctioneers license and not a court order could execute court warrants. The order did not and could not take the place of a valid auctioneers license required or as envisaged by the provisions of the Act.

In the result I would allow the appeal with costs and set aside the ruling and order of the learned magistrate. In substitution I would order that the application dated 19<sup>th</sup> February, 2001 be allowed terms of prayers 3, 4, 5, 6, 7, 8, 11, 13 & 14 on the face of application. The appellant shall have the costs of the appeal as well.

**Judgment dated, signed and delivered** at Kisii this 16<sup>th</sup> July 2010.

**ASIKE-MAKHANDIA**

**JUDGE**