



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL AND TAX DIVISION**  
**CIVIL CASE NO. 539 OF 2006**

**PARAMOUNT UNIVERSAL BANK LTD.....1<sup>ST</sup> PLAINTIFF**  
**BULK MEDICALS LIMITED**  
**(IN RECEIVERSHIP AND ACTING BY ITS RECEIVERS**  
**AND MANAGERS).....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**HALIFAX ESTATE AGENCY LTD.....1<sup>ST</sup> DEFENDANT**  
**M.N KANYI T/A**  
**PANAMA ROVERS AUCTIONEERS .....2<sup>ND</sup> DEFENDANT**

**RULING**

1 On 30<sup>th</sup> June, 2006, the 2<sup>nd</sup> defendant acting on instructions of the first defendants levied distress for rent on the 2<sup>nd</sup> plaintiff's business premises situated on West Vision House. The 2<sup>nd</sup> defendant issued a proclamation on the 2<sup>nd</sup> plaintiff's properties and assets which were already charged in favour of the 1<sup>st</sup> plaintiff. The 2<sup>nd</sup> defendant carried away the 2<sup>nd</sup> plaintiff's goods which were perishable. The plaintiffs thus filed a suit seeking *inter alia* for an order of injunction to restrain the 2<sup>nd</sup> defendant from proceeding with the sale of the goods attached.

2 Parties realized the attached goods were perishable and by a consent dated 15<sup>th</sup> July, 2007, the 2<sup>nd</sup> defendant was permitted to proceed with the sale of the attached property as an auctioneer for both the plaintiffs and the 1<sup>st</sup> defendant. The second defendant was to inform the instructing clients of every step taken towards the sale they were also to deposit the proceeds of the sale in an interest earning account. However, the 2<sup>nd</sup> defendant only forwarded a sum of Ksh. 279,427/55 without any explanation. The 2<sup>nd</sup> defendant has also not given an account.

3. The plaintiffs filed a Notice of Motion dated 10<sup>th</sup> June, 2008 seeking for the following orders:-

(a) The 2<sup>nd</sup> defendant be compelled to deposit in this honourable court all the sale proceeds realized upon the disposal of the 2<sup>nd</sup> plaintiff's attached goods within such time as may be specified by this Honourable Court.

(b) The 2<sup>nd</sup> defendant be ordered to deliver a true and accurate account of all the goods sold and the proceeds realized upon sale.

This application was not opposed by the 2<sup>nd</sup> defendant it was supported by the 1<sup>st</sup> defendant, the plaintiffs and 1<sup>st</sup> defendant's advocates filed written submission there are no submissions by the 2<sup>nd</sup> defendant.

4. Accordingly this application is not opposed it is also seeking for orders which are necessary as the 2<sup>nd</sup> defendant being an auctioneer who was acting on instructions from both the plaintiffs and 1<sup>st</sup> defendant had a duty to render accounts to the instructing clients. The application is allowed the 2<sup>nd</sup> defendant is given 30 days within which to deposit the money from the sale proceeds in court and to render a true and accurate account of the goods sold. The applicants shall have the costs of this application as against the 2<sup>nd</sup> defendant.

RULING READ AND SIGNED THIS 22<sup>ND</sup> DAY OF OCTOBER, 2010

**MARTHA KOOME  
JUDGE**