

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

Civil Misc. Cause 761 of 2006

JAMES FRANCIS KARIUKI

t/a NDARUGU MERCHANTS.....AUCTIONEER/RESPONDENT

V E R S U S

SAVINGS & LOANS (K) LIMITED.....1ST RESPONDENT/APPLICANT

KIMMESSY ENTERPRISES LIMITED...2ND RESPONDENT/APPLICANT

R U L I N G

By a Chamber Summons filed on 28th August 2006, Savings & Loans (K) Limited hereinafter referred to as 1st respondent/applicant, has come to this court under Order VI Rule 13 (1) (d) of the Civil Procedure Rules, Rules 55 (2) of the Auctioneers Rules 1997, and Section 3A of the Civil Procedure Act, seeking to have the Auctioneer's Bill of Costs filed pursuant to the Auctioneers Act Number 5 of 1996 and the Auctioneers Rules 1997 struck out with costs.

The main ground upon which the application is grounded is the fact that contrary to the Auctioneers Act and the express instructions given to the Auctioneer by the 1st respondent, the Auctioneer conducted the auction sale only two days after the date of the advertisement of the sale thereby rendering the sale a nullity. The advocate for the 1st respondent has urged the court not to allow the Auctioneer/Applicant to benefit from an illegal auction caused by the Auctioneer's own failure to comply with the rules. Although the date for the hearing of the application was taken by counsel neither the Auctioneer nor his advocate attended the court for the hearing of the application which therefore proceeded *ex-parte*.

I have considered the application and cannot but concur with the 1st respondent's advocate, that the Auctioneer cannot be allowed to benefit from an exercise which has ended up being of no benefit to his principal due to the Auctioneer's negligence and failure to comply with the law.

I find that the Auctioneer having failed to provide the required services strictly in accordance with the instructions given and the laid down rules, He is not entitled to any costs for these services. Accordingly, I strike out the Bill of Costs filed on the 1st August 2006. Each party shall bear their own costs.

Orders accordingly.

Dated, signed and delivered this 12th day of November 2007.

H. M. OKWENGU

JUDGE

