



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

Misc Civ Appli 1517 of 2003

JESSE MBURU GITAU, FRANCIS MUCHIRI GIKANGA, TEPHEN JUMA

ONYANGO & JUSTUS MATUNDURA (Being registered National Officials of the

Kenya National Society of Professional auctioneers) APPLICANTS

VERSUS

**THE ATTORNEY GENERAL
RESPONDENT**

RULING

On 2nd May 2006 the judicial review application was withdrawn with an order that the costs be contested.

On 23rd May 2006 I heard submissions from counsel for the applicant and counsel for the respondent (IP). The applicant filed a written submission on 23rd May 2006 and informed the court that he had nothing further to say and counsel for the Interested Party (IP) made a brief oral submission which raised three points:

- 1) that the interested Party had a legitimate interest in the proceedings hence its application to join.
- 2) that the Interested Party has been the active participant by initiating various steps in the proceedings
- 3) that under S 27 of the Civil Procedure Act costs should follow the event.

The applicants have raised the following points:

- 1) that on 5th November, 2003 the Attorney General unreasonably exercised his revision powers conferred under the Revision Act Cap 1 of the Laws of Kenya
- 2) The applicant challenged the Attorney General decision on 3rd December, 2003 by an application for leave which was obtained and a stay granted
- 3) On 8th January 2004 an application for judicial review was filed
- 4) On 5th January 2004 the Solicitor General wrote to the applicants conceding the effect of S 31(e) of the Auctioneers Act

5) On 6th April 2005 the Attorney General published a Miscellaneous Amendment Bill 2005 which amended S 3(1) of the Auctioneers Act and in effect removing the need to impugn the Attorney General decision and the substantive of the judicial review application was taken away by the amending legislation hence the withdrawal of the application for judicial review.

I have taken the above points into account in preparing this ruling. At the outset the court must find that S 27 of the Civil Procedure Act does not apply to judicial review matters since the non-application of the Civil Procedure Act and rules can now be regarded a settled law. They have no application. However this court has in its inherent jurisdiction a responsibility to be just to the parties. The notion or principle that costs should follow the event is a principle based on justice since the successful parties should not except where he is at fault be denied them costs. However it is important to consider who if at all is a successful party in this case.

In my finding as between the applicants and the Interested Party it is a win-win situation – in effect both parties are happy and there is no winner. In addition what led to the consent is the legislation which arose from the Miscellaneous Amendment Bill 2005 affecting section 3(1) (e) of the Auctioneers Act. It is this section that the applicants’ application wanted to challenge. The amendment did in effect take away the substance of the judicial review application hence the need to withdraw. Seen from this standpoint the applicants can be said to be the successful parties. However since the initiation to amend was taken by the Attorney General the real loser is the Attorney General.

I find that there is no successful party and since no one has sought costs from the Attorney General the court in exercise of its inherent powers and in exercise of its discretion concerning costs holds and orders that parties bear their respective costs.

It is so ordered

DATED and delivered at Nairobi this 30th day of June, 2003.

J.G. NYAMU

JUDGE