



Malombo v Auctioneers Licensing Board & another (Petition E056 of 2024) [2025] KEHC 8660 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PETITION E056 OF 2024**

**J NGAAH, J
JUNE 20, 2025**

BETWEEN

ROBINSON MALOMBO PETITIONER

AND

AUCTIONEERS LICENSING BOARD 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The petitioner filed a petition dated 12 September 2024 in which he has sought for the orders:

- “a) That this Honorable Court be pleased to grant an order of Mandamus directing the 1st respondent to provide list of all registered and licensed auctioneers in the Republic of Kenya for the year 2024.
 - b) That this Honorable court do issue an order directing the 1st Respondent to investigate the activities of the interested party as regards the business of an auctioneer and if found culpable then the 2nd Respondent be directed to proceed and take the necessary action as provided under the Act on the circumstances
 - c) That in case the interested parties are found culpable then the 1st Respondent be directed to take necessary action as provided for in the law.
 - d) Any Such other and /or further order the Honorable court may deem fit and just and expedient to grant in the circumstances of this case.
- I) Costs of the petition”



2. An affidavit in support of the petition has been sworn by Robinson Onyango Malombo, the petitioner and who also is an advocate of this Honourable Court.
3. According to Malombo, he was instructed by a client who, apparently was threatened with attachment and sale of his goods. The learned counsel sought to establish whether the auctioneer who had been detailed to attach and sale his client's property was registered and licensed. The status of the auctioneer's registration and license could not be found on the 1st respondent's website and, therefore, the petitioner requested for this information from the 1st respondent. However, the 1st respondent could not avail it.
4. Yet the 1st respondent, according to the petitioner, is the custodian of all records of all licensed auctioneers practising as such in this country. It is pleaded that failure by the 1st respondent to furnish the records as requested is in breach of the petitioner's right to access information under article 35 of *the Constitution*, hence this petition.
5. According to the petitioner, the 1st and 2nd respondents ought to be compelled by this Honourable court to produce the records of all licensed auctioneers in Kenya.
6. Alongside the petition, the petitioner also filed a motion for conservatory orders. The motion seeks primarily for the orders:
 - “3. That this Honorable Court be pleased to issue an order Directing the 1st Respondents (sic) to produce an official list of all licensed and or authorized auctioneers to practice as auctioneers in the Republic of Kenya for the year 2024.
 4. That this Honorable Court be pleased to issue an order compelling the 1st Respondent by itself and or servants or agents compelling them to investigate the activities of the interested party as regards his involvement in the business of auctioneer and report be availed before this Honorable court for further directions.”
7. In response to the petition, the 2nd respondent filed preliminary objection in which he has pleaded:
 - “1. That the suit presently brought against the 1st and 2nd respondents is incompetent as it contravenes the mandatory provisions of Section 24 of the *Auctioneers Act* Cap 526.
 2. That by dint of it contravening the provisions of section 24 of the *Auctioneers Act* this Honorable court lacks the jurisdiction to entertain the suit herein as the same violates the doctrine of exhaustion hence an abuse of the court process.”
8. The interested party has sworn a replying affidavit denying having been instructed by the petitioner at any time. Again, there is no evidence that he has ever been instructed to undertake any task on behalf of the petitioner's client.
9. Going by the petitioner's own pleadings and affidavit, it is his client who is or ought to be aggrieved by the alleged failure by the 1st respondent to release certain information. That being the case and, considering that the petitioner is obviously acting at the behest of his client's instructions, then it is the client, and not the advocate, who ought to be the petitioner in this petition. Yet the identity of the purported client has not been disclosed. In the absence of any evidence to the contrary, it



can be presumed that such a client does not exist and this petition is, for all intents and purposes, misconceived.

10. But even if the learned counsel was to be assumed to be the proper petitioner, his petition would still fail on two grounds. First, the petitioner is seeking to enforce article 35 of *the Constitution* on the right to access information. The article reads as follows:

35. Access to information

- (1) Every citizen has the right of access to—
 - (a) information held by the State; and
 - (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.
- (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
- (3) The State shall publish and publicise any important information affecting the nation.

11. In order to actualise this right, Parliament has enacted the Right to Information Act, cap. 7M. In its preamble, it is stated to be:

“An Act of Parliament to give effect to Article 35 of *the Constitution*; to confer on the Commission on Administrative Justice the oversight and enforcement functions and powers and for connected purposes.”

12. Section 8 has detailed how information can be accessed. It provides as follows:

8. Application for access

- (1) An application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.
- (2) Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the information officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.
- (3) The information officer shall reduce to writing, in a prescribed form the request made under subsection (2) and the information officer shall then furnish the applicant with a copy of the written request.
- (4) A public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.



13. Section 9 details how the application should be processed. For purposes of determination of the viability of the petitioner's petition, there is no evidence that the applicant has made the application as required under section 8 of the [Access to information Act](#). Without belabouring the point, the 1st respondent cannot be said to have declined to release information when no or no proper application for such information has been made.
14. The second reason why the petition is not viable is because the it is obvious that the petitioner's client has sidestepped the procedure of resolving complaints against auctioneers as prescribed by the [Auctioneers Act](#), cap. 526. Section 24 of the Act stipulates that a complaint against an auctioneer ought to be made to the Auctioneers Licensing Board established under section 3 of the Act. The Board would have been bound to hear the complaint and make a determination. If dissatisfied with the determination, the petitioner's client would have been entitled to appeal the decision to this Honourable Court.
15. In the absence of any reason why the allegedly aggrieved party has failed to follow the procedure prescribed by the [Auctioneers Act](#) in addressing his grievances against the auctioneer, this petition is misconceived and an abuse of the due process of this Honourable Court.
16. Finally, even if there was a viable petition before court, I note that the prayers sought in the application are more or less on all fours with the prayers in the main petition. If the prayers seeking conservatory orders were to be granted, the petition may very well be deemed to have been determined at an interlocutory stage. This not the purpose conservatory orders are meant to serve; rather, they are meant to preserve the substratum of the petition pending the hearing and determination of the petition.
17. For the reasons I have given, I hold that the petition before court is misconceived and an abuse of the due process of this Honourable Court. It is hereby struck out with costs.

SIGNED, DATED AND DELIVERED ON 20 JUNE 2025

NGAAH JAIRUS

JUDGE

