



REPUBLIC OF KENYA



Jovan H. Kariuki t/a Moran Auctioneers v Cape Holdings Limited (Miscellaneous Case E1068 of 2024) [2025] KEHC 10901 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CASE E1068 OF 2024**

BK NJOROGE, J

JULY 24, 2025

BETWEEN

JOVAN H. KARIUKI T/A MORAN AUCTIONEERS APPLICANT

AND

CAPE HOLDINGS LIMITED RESPONDENT

RULING

1. This Ruling is in respect to the Application by Cape Holdings Limited under a Certificate of Urgency by way of a Notice of Motion dated 23rd January, 2025.
2. The Applicant seeks the following orders;
 - i. Spent
 - ii. The suit be stayed pending:
 - a. Pending the hearing and determination of the proceedings before the Auctioneer's Licensing Board in Misc. Cause No. 96 of 2024 *Cape Holdings Limited (Under Administration) v Jovan Jovan Kariuki T/A Moran Auctioneers*.
 - b. Payment of costs of Kshs.100,000 to the Respondent's advocates as ordered in (Milimani Comm. Misc. E806 of 2024 *Jovan Kariuki T/A Moran Auctioneers v Cape Holdings Limited (Under Administration and Another)*).
 - iii. The court do order that interest of 14% per annum do accrue on the costs of Kshs.100,000 with effect from 18th December 2024 until payment in full.
 - iv. The Respondent be ordered to pay the costs of the application.



3. This Application was supported by the grounds on the face of it and by the Affidavit of Vinaychandra Sanghrajka sworn on 23rd January 2025. It is deponed that there is pending application before the Auctioneer's Licensing Board seeking leave to file the complaint or reinstate the originally withdrawn complaint. The doctrine of exhaustion of remedies requires that the Auctioneer's Licensing Board determines any complaint against an errant auctioneer. This is before the Auctioneer can proceed to tax his/her Bill of costs for work done by the Auctioneer.
4. That the present suit is an abuse of Court process as the Auctioneer is failing to disclose the proceedings before the Auctioneer's Licensing Board.
5. In the event the application for extension of time is allowed, the present suit cannot proceed as the bill of costs is the basis of the complaint to be determined.
6. The matter is sub judice as the proceedings relating to the auctioneer's cost are pending before the Auctioneer's Licensing Board.
7. The Court has the power to stay the proceedings under Order 25 Rule 4 where the costs of a previous suit have been assessed and not paid. Therefore, the present suit should be stayed until the costs are paid.
8. The proceedings should also be stayed pending the hearing and determination of the proceedings before the Auctioneer's Licensing Board in Misc. Cause No. 96 of 2024 *Cape Holdings Limited (Under Administration) v Jovan Jovan Kariuki T/A Moran Auctioneers*.
9. The Auctioneer has refused to pay the assessed costs despite an express order of the court and reminders being ignored.
10. The Respondent to the application filed the Replying Affidavit of Jovan H. Kariuki sworn on 7th February 2025. In response to the allegation that he failed to disclose relevant matters; he avers that there is no complaint against him at the Auctioneers Licensing Board (the Board). The Application alluded to by the Cape Holdings Limited seeks leave of the Auctioneer's Licensing Board to reinstate a complaint that was withdrawn more than 11 months ago.

Issues for determination

11. The parties have filed their written submissions, which the Court has carefully considered. The single issue that arises for determination is;
 - a. Whether a stay order should issue as prayed for.

Analysis

12. It was the Cape Holdings Limited's case that the present suit is an abuse of Court process, as the Respondent, in failing to disclose the proceedings before the Auctioneer's Licensing Board, is abusing the Court process. In the event the application for extension of time is allowed, the present suit cannot proceed as the bill of costs is the basis of the complaint to be determined.
13. In essence, the Cape Holdings Limited is seeking stay pending the proceedings before the Auctioneer's Licensing Board. In *Kenya Power & Lighting Company Limited vs Esther Wanjiru Wokabi* [2014] eKLR, the Court distilled three principles in allowing a stay of proceedings as follows:
 - a. Whether the Applicant has established that he/she has a prima facie case arguable;
 - b. Whether the application was filed expeditiously; and



- c. whether the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.
14. On whether Cape Holdings Limited has established a prima facie case; the Applicant argued that it was patently illegal for the auctioneer to rely on an expired valuation report over the suit properties. That this breached Rule 11(1)(b)(x) of the *Auctioneer's Rules*. The provision makes it mandatory that the reserve price for each separate piece of land is based on a professional valuation carried out not more than 12 months prior to the proposed sale. Further, it is illegal for an auctioneer to base fees on the decretal amount when fees are to be based on the value of the property. No fees can be based on an expired valuation report.
15. In contrast, the Respondent stated that the dispute relates to the proceedings before the High Court and that the complaint lodged before the Board does not correlate with a dispute on assessment of auctioneer's fees.
16. The Auctioneer's Application deals with a Bill of Costs in relation to his fees. As Cape Holdings Limited has deponed, there is a complaint with regard to the Auctioneer's fees. That application has not yet fully crystallised as what is sought is leave to institute a complaint that was withdrawn. It is not denied that such an application is pending before the Board for its determination. This Court may not speak as to the merits of the application as it lies for adjudication before the Board. It is for the Board to allow or decline the leave sought. However, this Court cannot shut its eyes to the existence of the Application. Therefore, it is the Court's considered view that Cape Holdings Limited has established a prima facie case.
17. Was the Application filed expeditiously? The present Application was filed on 23rd January 2025, while Cape Holdings Limited's Application before the Board was filed on 19th November 2024; thus, the Application was filed expeditiously.
18. The Third ground is whether the Applicant has established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought. This Court is satisfied that it is in the interest of justice, to grant the orders sought. No compelling reason has been offered by the Respondent to deny the grant of the said orders. It is prudent that the issue before the Board be dealt with first, so that any other issue that arises afterwards can be dealt with conclusively by the Court.
19. In the event the Board was to admit the complaint and make any adverse orders against the Auctioneer, this could have a bearing on the trajectory of the claim for Auctioneers fees. Conversely if the Board declines to admit the complaint, or having admitted the complaint, refuses to make any adverse findings, this particular ground of objection presented to this Court would be lost to Cape Holdings Limited.
20. Notably, this Court has issued an order dated 15th January 2024 and directed the payment of costs of Kshs.100,000 to Cape Holdings Limited's Advocates in (Milimani Comm. Misc. E806 of 2024 *Jovan Kariuki T/A Moran Auctioneers v Cape Holdings Limited (Under Administration and Another)*).
21. Regrettably, the Respondent has not complied with the said orders and has not advanced any reason for failing to abide by the order of the Court. As an Officer of this Court, the Auctioneer should be at the forefront of adherence to Court orders. This includes payments of costs as ordered by the Court. Section 23 of the *Auctioneers Act* lays the duties of an Auctioneer as an Officer of the Court as follows; -
23. Duties of auctioneers
- A licensed auctioneer shall—



- (a) at all times act in a manner befitting an officer of the court and shall ensure that his employees, servants or agents act in like manner;
22. There is no convincing reason why such costs have not been paid. The Court has not been informed of any application for setting aside or an Appeal against the orders for payment of costs. Yet the Auctioneer seeks that discretion be exercised in his favour.
23. In closing, the Court notes that this is a matter that calls for the exercise of discretion. It is a matter that affects how justice is administered in this Country. It is a dispute between an Officer of this Court and a party seeking justice in Court. Where necessary, the Court will veer towards allowing a party to ventilate their case fully, so that justice is not only said to have been done, but also seen to have been done. Let Cape Holdings Limited have his shot before the Board. Let it not be said that this Court ignored its plea or muzzled a party who desired to pursue justice. As in all matters of exercise of discretion, each matter will be determined according to its own unique circumstances and its merits.
24. On award of interest, the Court notes that costs were awarded in Milimani Comm. Misc. E806 of 2024 *Jovan Kariuki T/A Moran Auctioneers v Cape Holdings Limited (Under Administration and Another)*. It is to that file that the award of interest should be sought, and not in this file.
25. The same goes for the prayer for payment of costs. That order having already been made, the Applicant should be proceeding to enforce it by way of execution.
26. The Upshot is that the Application is allowed in the terms stated herein below.
27. However, the Court would not wish that the Cape Holdings Limited goes to sleep on the basis of the stay orders granted. The stay will be limited to a period of six (6) months or up to the date when the Board delivers its decision as to the Application dated 19th November, 2025, whichever event happens earlier. Should Cape Holdings Limited fail to prosecute their application pending before the Board within the time stipulated, the Applicant herein may proceed with the assessment of his Bill of Costs. This will be subject to prior settlement of costs of Kshs.100,000 to the Applicant's Advocates as directed by the order of 15th January 2024 in (Milimani Comm. Misc. E806 of 2024 *Jovan Kariuki T/A Moran Auctioneers v Cape Holdings Limited (Under Administration and Another)*).
28. As to costs, the same should be costs in the cause.

Determination

29. The Application by Cape Holdings Limited is allowed in the following terms;
- a. A stay of this suit is hereby granted limited to a period of six (6) months from the date of this Ruling or up to the date when the Board delivers its decision as to the Application dated 19th November, 2025 pending before the Auctioneer's Licensing Board in Misc. Cause No. 96 of 2024 *Cape Holdings Limited (Under Administration) v Jovan Jovan Kariuki T/A Moran Auctioneers*, whichever event happens earlier.
- b. Should Cape Holdings Limited fail to prosecute their application pending before the Board within the time stipulated, the Applicant herein may proceed with the assessment of his Bill of Costs. This will be subject to prior settlement of costs of Kshs.100,000 to the Applicant's Advocates as directed by the order of 15th January 2024 in (Milimani Comm. Misc. E806 of 2024 *Jovan Kariuki T/A Moran Auctioneers v Cape Holdings Limited (Under Administration and Another)*).
- c. The costs of the Application be costs in the cause.



30. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of

Miss Muluvi holding brief for Mr. Eric Mutua SC for the Auctioneer/Applicant.

Mr. Kigata for Mr. Allen Gichuhi SC for the Respondent.

Mr. Luyai Court Assistant

