



REPUBLIC OF KENYA



**Anditi v Elijah Mogeni t/a Elimonyaco Auctioneers (Civil Appeal E105B of 2021) [2024] KEHC 5604 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5604 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E105B OF 2021**

**KW KIARIE, J**

**MAY 22, 2024**

**BETWEEN**

**JAMES ANGAWA ANDITI ..... APPELLANT**

**AND**

**ELIJAH MOGENI T/A ELIMONYACO AUCTIONEERS ..... RESPONDENT**

*(Being an Appeal from the ruling and order in Oyugis Senior Principal Magistrate's Miscellaneous Civil Application No. 26 of 2021 by Hon. B.O. Omwansa –Senior Principal Magistrate)*

**JUDGMENT**

1. On the 27<sup>th</sup> day of October 2021, Hon. B.O. Omwansa delivered a ruling on the application dated the 28<sup>th</sup> day of August 2021.
2. The appellant was aggrieved by the ruling and filed this appeal. The firm of Kimondo Gachoka & Company Advocates represented him. He raised the following grounds of appeal:
  - a. The learned trial magistrate erred in law and misdirected himself when he failed to consider the appellant's evidence herein on both points of law and facts as enumerated in his affidavits.
  - b. That the learned trial magistrate's decision was unjust against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
  - c. That the learned trial magistrate erred in law and misdirected himself when he failed to consider the provisions set out in the [Auctioneers Act](#), Cap 526.



- d. The learned trial magistrate erred in law and fact in finding the applicant/appellant liable to pay the auctioneers as per his Bill of Cost dated 24<sup>th</sup> March 2021, being the respondent herein, about a proclamation that had already been settled and in particular the following:
    - a. That the Applicant/appellant's application lacked merit in totality.
  - e. The learned trial magistrate erred in law and fact, finding that further and/or subsequent fees are payable to a single proclamation despite earlier payments being duly made.
  - f. The learned trial magistrate erred in law and fact by making a ruling that is not supported by any law, given the circumstances of this case and the evidence presented therein.
  - g. The learned magistrate erred in law and fact by overly relying on the evidence presented in the respondent's affidavit, which was irrelevant, and without addressing his mind to the circumstances of the case.
  - h. The learned magistrate erred in fact and law in failing to consider the stare decisis in a case of a similar nature.
3. The respondent did not file any response or submissions.
  4. This Court is the first appellate court. I know my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
  5. The appellant filed an incomplete ruling. It stopped where the learned trial magistrate was embarking on making a finding on the application. Without the original record, I am unable to adjudicate on this appeal. The appellant needed to ensure that the documents he relied on were in order.
  6. I, therefore, strike out the appeal with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 22<sup>ND</sup> DAY OF MAY 2024.**

**KIARIE WAWERU KIARIE**

**JUDGE**

