



**Nyasama v A.M. Mulwa t/a Swiftways Auctioneers (Miscellaneous Application E662 of 2023)  
[2024] KEHC 11138 (KLR) (Commercial and Tax) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11138 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E662 OF 2023**

**PM MULWA, J**

**SEPTEMBER 19, 2024**

**BETWEEN**

**ALEX OGOMA NYASAMA ..... APPLICANT**

**AND**

**A.M. MULWA T/A SWIFTWAYS AUCTIONEERS ..... RESPONDENT**

**RULING**

1. The applicant instituted this suit vide a Chamber Summons application dated 27<sup>th</sup> July 2023 filed pursuant to Article 165 (6) and (7) of *the Constitution* of Kenya and Sections 1A, 1, 2, 3A of the *Civil Procedure Act*.
2. The applicant prayed for an order to recognise as a decree of the court the Auctioneers Licensing Board judgement dated 9<sup>th</sup> June 2023.
3. The grounds of the application were that the applicant filed a complaint against the respondent before the Auctioneers Licensing Board (the Board) for illegally attaching and selling his household goods when the applicant did not have any rent arrears. The applicant averred that the Board, vide a letter dated 9<sup>th</sup> June 2023 found the respondent accountable and directed him to return the goods or pay the market value, however, the respondent had neglected to comply with the orders of the Board.
4. The respondent filed a preliminary objection (PO) dated 12<sup>th</sup> March 2024 in respect of the entire suit. In the PO, the respondent contended that the applicant's court filings do not constitute any mode of pleadings known to our jurisprudence and the suit was therefore incompetent and incurably defective for want of form.
5. The parties filed written submissions; for the applicant dated 24<sup>th</sup> June 2024 and for the respondent dated 6<sup>th</sup> May 2024.



6. The court having carefully considered the submissions and pleadings herein, the issue calling for determination is whether the PO is meritorious.
7. The respondent submitted that a suit can only be instituted by way of a plaint, originating summons, petitions, interpleader proceedings and appeals in certain cases and that the definition of pleadings espoused under Section 2 of the Civil Procedure Act is not broad enough to include chamber summons.
8. The applicant submitted that similar to enforcement of Arbitral Awards as envisioned in the Arbitration Act, a party seeking enforcement of such an award is not required to file a proper suit, rather a chamber summons application properly supported by the award to be enforced is sufficient. And further that the only time this court can refuse to recognize and enforce an award of a competent body is when the said award offends the public policy doctrine.
9. Under Section 24 of the Auctioneer’s Act, a complaint against a licensed auctioneer may be made to the Board by an aggrieved person. After hearing the complaint, the Board may order that the complaint be dismissed or may issue various orders as provided in the said Act including the suspension of the auctioneer’s licence.
10. Section 24 (6) thereto states:

“ Any order of the Board may be filed with a subordinate court and shall, upon service of the notice of filing thereof upon the licensed auctioneer, be enforceable in the same manner as an order of the subordinate court to the like effect.”
11. The application before the court is seeking to enforce an order issued by the Board. As provided under Section 24 (6) above, an order of the Board is enforceable in a subordinate court and shall be enforceable in the same manner as if it is an order of the subordinate court.
12. It is therefore clear that the instant application was filed before the wrong court. This Court is not a subordinate court. On this ground alone, and as a preliminary point of law, I strike out this application for being filed in the wrongly court. Costs to the respondent.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI**

**THIS 19TH DAY OF SEPTEMBER 2024.**

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**P. MULWA**

**JUDGE**

**In the presence of:**

Mr. Paul Macharia for applicant

Mr. Apollo Muinde for respondent

Court Assistant: Carlos

