



**Harrogate Limited & another v Mwananchi Credit Ltd; Mistan
Auctioneers (Interested Party) (Civil Suit E843 of 2021)
[2023] KEHC 23374 (KLR) (Commercial and Tax) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E843 OF 2021**

**A MABEYA, J
OCTOBER 12, 2023**

BETWEEN

HARROGATE LIMITED 1ST PLAINTIFF

ALICE MUTHONI THUO 2ND PLAINTIFF

AND

MWANANCHI CREDIT LTD DEFENDANT

AND

MISTAN AUCTIONEERS INTERESTED PARTY

RULING

1. This is a ruling to determine if it is necessary for the court to deliver a ruling on the pending notice of motion dated 16/1/2023 in light of the withdrawal of the sale of the suit property by public auction.
2. The plaintiffs' application dated 16/1/2023 sought inter-alia leave to amend their plaint dated 4/11/2021, an injunction pending the determination of the suit to restrain the defendant from transferring the suit property to the successful bidder of the auction conducted on 27/10/2022 by the interested party, an order to have the defendant provide a copy of the report to the Financial Reporting Centre regarding the cash deposit of KshS.33,750,000/- and an order to set aside the sale declaring the 3rd defendant as the highest bidder and purchaser of the suit property.
3. The application essentially sought to stop the transfer of the suit property to the successful bidder at the auction that took place on 27/10/2022 and to have the bidder and auctioneer enjoined in this suit. The plaintiff's grounds were that the auction was carried out fraudulently and that the source of the funds of the deposit was questionable.



4. The defendant's advocate through a letter dated 1/2/2023 informed both the court and the plaintiff that the purchaser had withdrawn from the sale due to the pending litigation and that the defendant had similarly abandoned the sale.
5. It follows therefore that there is no dispute regarding the sale by public auction that took place on 27/10/2022. The sale was cancelled therefore the validity of the auction is not in question anymore. I agree with the submissions of the defendant that the dispute on the sale of the suit property has been overtaken by events and there is no new issue pending for determination in the said application. Further, since there is an injunction in place preserving the suit property till the determination of the suit, it will be a waste of judicial time to determine an application already overtaken by events.
6. Thus, it would be in vain and would serve no logical purpose for the court to consider the application dated 16/1/2023. Let the parties immediately complete the pre-trials for the suit to proceed to hearing.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER, 2023.

A. MABEYA, FCI Arb

JUDGE

