



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC. APPLICATION NO. 870 OF 2010

P. NG'ANG'A MBURU

T/A VIRMIR AUCTIONEERSAPPLICANT

- VERSUS -

NAIROBI INSTITUTE OF

BUSINESS STUDIES LTD..... 1ST RESPONDENT

PIONEER HOLDINGS (AFRICA) LTD.....2ND RESPONDENT

RULING

(being an application for review of the ruling of this court dated 22nd May, 2018)

1. This court by its ruling dated **22nd May, 2018**, made a determination that the charges of **Virmir Auctioneers** were payable by **Pioneer Holdings (African)Ltd (Pioneer)**.
2. It is that finding that is the subject of an application dated **29th May, 2018** filed by **Pioneer Holdings (Pioneer)**.

BACKGROUND

3. **Pioneer** obtained judgment against Nairobi Institute of Business Studies Ltd (**Nairobi Institute**) for **Ksh 1, 162,656** with interest and costs. **Pioneer** sought to execute against **Nairobi Institute** for the amount due. The warrant of attachment was issued to **Virmir Auctioneer**. That said auctioneer proclaimed the movable goods of **Nairobi Institute** but before those goods were removed, from the custody of **Nairobi Institute** the matter was amicably settled between **pioneer** and **Nairobi Institute**.

4. After the settlement of the judgment amount, the auctioneer's charges were not settled. There was a dispute about who was to bear the liability of those costs.

5. That dispute led to the auctioneer filing a **notice of motion** dated **2nd September, 2010**. It was that **notice of motion** which was determined by this court by its ruling dated **22nd May, 2018**. By that ruling the court determined that the auctioneer's costs would be borne by **Pioneer**.

NOTICE OF MOTION FOR REVIEW

6. The **notice of motion** dated **29th May, 2018** seeks to review the ruling of **22nd May, 2018**. The affidavit in support of that application was sworn by **Fredrick Ngatia**, learned counsel for **Pioneer**.

7. By that affidavit, learned counsel deponed that the ruling of **22nd May, 2018**, at first, correctly stated that the Auctioneer's fees were payable by **Nairobi Institute**, but, in its conclusion, stated and held that the said costs were payable by **Pioneer**. It was further deponed that the errors in that ruling, were evident on the record.

8. When the application came for hearing interpartes, the learned counsels for **Pioneer** and **Nairobi Institute** and **Virmir Auctioneers** confirmed that there was an error in the ruling and that the costs were indeed payable by **Nairobi Institute**.

9. It is important to state, that although this court concedes that there was an error, in ordering **Pioneer** to pay the Auctioneer's fee, the error was precipitated by the learned counsels who in their written submissions, in relation to the notice of motion dated **2nd September, 2010**, interchangeably referred to their clients as applicants and respondents. Those references led this court not to be sure which party was the applicant and which one was the respondent.

10. However, since the parties are in agreement that the **notice of motion** dated **29th May, 2018** and that the ruling of **22nd May, 2018** be reviewed, I make the following orders:

a. *Paragraphs 10, 11, 12 and 13 of the ruling of 22nd May, 2018, is hereby reviewed to the extent that wherever there is mention of Pioneer Holding (Africa Limited) it shall be taken to refer to Nairobi Institute of Business studies Ltd.*

b. *In that regard and for avoidance of doubt, the costs of Virmir Auctioneers charges in respect to execution in Milimani HCCC No. 535 of 2005 shall be taxed against and paid by Nairobi Institute of Business Studies Ltd.*

c. *There shall be no orders as to costs in respect to the notice of motion dated 29th May, 2018.*

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of July 2018.

MARY KASANGO

JUDGE

Ruling read in open court in the presence of

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant