

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 528A OF 2016

GEORGE GITONGA MUCHIRI T/A

FANTASY AUCTIONEERSAPPELLANT

VERSUS

THE AUCTIONEERS LICENSING BOARD 1ST RESPONDENT

NU-PLAN ENGINEERING &

DESIGN LIMITED2ND RESPONDENT

RULING

The appellant was penalised by the 1st respondent, The Auctioneers Licencing Board in some disciplinary proceedings arising from his conduct as an auctioneer. Aggrieved by the said punishment he has lodged this appeal. The decision of the 1st respondent was made on 27th July, 2016 whereby the appellant was suspended for a period of six months from the said date and fined Kshs. 100,000/= and ordered to pay costs of Kshs. 50,000/= within 30 days.

The application before me was filed on 10th August 2016. Subsequent thereto, and informed by the fact that the application could not be determined before the deadline set by the Board, the court granted a stay of execution pending the determination of this application. The application was opposed and both counsel have filed submissions.

The application is premised on sections 1A, 1B, and 3A of the Civil Procedure Act and Orders 42 Rule 6 and 51 Rule 1 of the Civil Procedure Rules, seeking a stay of the decision of the Board and also a stay of further proceedings before the Board relating to the applicant until the determination of the appeal. All parties have filed written submissions which I have read.

Under Order 42 Rule 6 of the Civil Procedure Rules the application was filed timeously. The appellant is supposed to demonstrate to the court that substantial loss may result if the order of stay is not given.

I have related the averments in the appellant's affidavit to the contents of the Board decision in the letter dated 27th July, 2016. The appellant has the right of appeal. Justice must also look at both sides and the decision of the Board must have been informed by the proceedings leading to that decision, the conduct of the appellant and the attendant history contained therein.

It is true that substantial loss may result following the decision of the Board. At the same time however, the court cannot close its eyes to an equally substantial loss that may have been suffered by the 2nd respondent as a result of the actions of the appellant. He who comes to equity must come with clean hands. I say no more.

I do not wish to delve into whether or not the appellant has an arguable appeal because that may prejudice the appeal at the hearing. Suffice to say, the decision of the board contains a profile of misconduct on the part of the appellant which may not be easy to ignore.

For now, taking everything into consideration, I am not persuaded the appellant deserves the orders sought in the application. Accordingly the application is dismissed with costs to the respondents. The decision of the Board shall take effect forthwith.

Dated, signed and delivered at Nairobi this 6th Day of April 2017.

A. MBOGHOLI MSAGHA

JUDGE