



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 246 OF 2016

NAPOLEON W. MURENDE.....PLAINTIFF/APPLICANT

VERSUS

MOLYN CREDIT LIMITED.....DEFENDANT/RESPONDENT

AND

PAVE AUCTIONEERS.....RESPONDENT/AUCTIONEER

RULING

The application is dated 20th May 2020 and brought under section 3A of the Civil Procedure Act seeking the following orders;

- (a) That the court stays any further injunction herein till the auctioneers give an account of the attachment done on 11th April, 2019.
- (b) That the Pave Auctioneers do account for the auction of 18th April, 2019 or for the amounts realized after the auction pursuant to attachment done on 11/4/2009.
- (c) Costs be provided for.

The application is based on that grounds that the auctioneers were supposed to attach for a debt of Ksh. 152,450/=. That they attached goods worthy Ksh. 1,358,400/= and they have never given an account of the same. That the sale was to be done on 18th April, 2019 and they have not accounted for the sale. That legally the auctioneers are required to account to this court.

The applicant submitted that Pave Auctioneers attached his goods on 11th April, 2019 and they left the notification form showing that the decretal amount they were attaching for is Ksh. 152,450/=. Annexed and marked NM1 is a copy of the notification form. That despite that the decretal sum was a mere Ksh. 152,450/=:, they attached goods worthy Ksh. 1,358,400/=. Annexed and marked NM2 is a copy of the cash sale receipt. That when the auctioneers took the goods they undervalued his property and their estimate shows that the goods were at least worth Ksh. 806,200/=. That he got an order to stop the sale but when he served the order, the auctioneers said that the order had been overtaken by events. That when his application came up for hearing on 2nd May, 2019, he entered into a consent whereby the advocates for the defendant allowed him to settle the decree by making instalments of Ksh. 20,000/= per a month. That since the attachment was done the auctioneers has not accounted for the auction and they have not even communicated to the court about the amount they realized. That despite the fact that they took his goods of over a million shillings they have not told him how the auction took place and how the proceeds were applied. That he prays that the auctioneers do account for the proceeds and do refund him the excess of the amount realized.

This court has considered the application and the submissions therein. The applicant submitted that the auctioneers do account for the proceeds and do refund him the excess of the amount realized. I have perused the court file and find that on the 28th February 2018 this matter was dismissed with costs. The costs were taxed by consent and a stay granted for sixty days. The applicant has now come to court for orders against the auctioneer. This matter is one to be dealt with by the Auctioneers Board and not this court. The Auctioneers Act cap 526 of the Laws of Kenya sates that;

Section 4. Object and functions of the Board

(1) The object and purpose for which the Board is established is to exercise general supervision and control over the business and practice of auctioneers.

(2) Without prejudice to the generality of subsection (1), the Board shall—

(a) license and regulate the business and practice of auctioneers;

(b) supervise and discipline licensed auctioneers;

(c) to carry out training programmes for licensed auctioneers.

Section 24. Complaints against auctioneers

(1) A complaint against a licensed auctioneer of misconduct, which expression includes disgraceful or dishonourable conduct incompatible with the status of an auctioneer, may be made to the Board by any aggrieved person within a period of one year after the occurrence of the event giving rise to the complaint.

(2) Where a person makes a complaint under this section, the complaint shall be by affidavit by himself setting out the allegations of misconduct which appear to arise on the complaint, and shall be forwarded to the Board together with the prescribed fee.

(3) The Board shall give the licensed auctioneer against whom the complaint is made an opportunity to file an affidavit in reply to the allegations and to appear before it, and shall furnish him with a copy of the complaint, and of any evidence in support thereof, and shall give him an opportunity of inspecting any relevant document not less than seven days before the date fixed for the hearing: Provided that where in the opinion of the Board the complaint does not disclose any prima facie case of misconduct, the Board may at any stage of the proceedings, dismiss the complaint without requiring the licensed auctioneer to whom the complaint relates to answer any allegation made against him and without hearing the complaint.

(4) After hearing the complaint and the licensed auctioneer to whom the complaint relates, if he wishes to be heard, and considering the evidence adduced, the Board may order that the complaint be dismissed or if it is of the opinion that a case of misconduct on the part of the auctioneer has been made out, the Board may order— (a) that the licensed auctioneer be admonished; or (b) that the auctioneer's licence be suspended for such period, not exceeding six months as the Board thinks fit; or (c) that the auctioneer's licence be revoked; or (d) that such condition or conditions as it deems appropriate be attached to the auctioneer's licence; or (e) that the licensed auctioneer pay a fine not exceeding one hundred thousand shillings; or (f) that the licensed auctioneer pay compensation not exceeding one hundred thousand shillings to the person damaged by his misconduct; or (g) that the auctioneer be disqualified from holding an auctioneer's licence for such period as the Board thinks fit; or (h) such combination of the above orders as the Board thinks fit.

(5) The Board may make such order as to the payment by any party of any costs or witness' expenses and as to the expenses of the Board or the members thereof in connection with the hearing of any complaint as it may think fit

(6) 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.

I find for this reason this matter should be taken to the Auctioneers Board and not this court. This application is not merited and is dismissed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 28TH DAY OF JULY 2020.

N.A. MATHEKA

JUDGE