



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MATRIMONIAL CAUSE NO. 8 OF 2013**

W N.....PETITIONER

VERSUS

P B.....RESPONDENT

**RULING**

The issue in contention here is payment of the auctioneer's fees. The advocates for the respondent proceeded to instruct auctioneers following the court's ruling of 23<sup>rd</sup> August, 2013. At this point the petitioner rushed to court and sought and obtained on 27<sup>th</sup> September, 2013 a thirty (30) day stay. The petitioner submits that the decision to engage auctioneers was premature as the thirty (30) day period had not expired and the petitioner had already paid the Kshs. 500,000/= conditional payment into the respondent's advocates account. Ms. Muyaa for the respondent counters that they were not informed of this deposit and thus had no knowledge that payment had been met. Thirty (30) days from 23<sup>rd</sup> August, 2013 taking day one as 24<sup>th</sup> August, 2013 expired on 22<sup>nd</sup> September, 2013. Thus the instruction to the auctioneer on 23<sup>rd</sup> September, 2013 did not fall within the thirty (30) day period. After seeking and obtaining the thirty (30) day leave on 23<sup>rd</sup> August, 2013 the petitioner took no further action. He did not file any appeal against the ruling and did not file a substantive motion for stay. It was only on 27<sup>th</sup> September, 2013 **after** proclamation that the petitioner rushed to court and obtained a stay. This stay was made conditional upon the petitioner depositing in court the sum of Kshs. 500,000/= within fifteen (15) days.

Upon making the required payment it was the responsibility of the petitioner to inform the respondent or her lawyer that payment had been made. His failure to do this cannot be blamed on the respondent. I therefore find that the error which occasioned the instruction of the auctioneers was a failure on the part of the petitioner. As such the petitioner is liable to pay the auctioneer's fees. It is so ordered.

**Dated and delivered in Mombasa this 9<sup>th</sup> day of May, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Muyaa for Respondent

No appearance by Petitioner

Court Clerk Mutisya