



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE 1638 OF 2007**

**J.N. KINGOTI *t/a* MAX AUCTIONEERS ..... PLAINTIFF**

**VERSUS**

**DR. CHRISTOPHER LUUSA .....DEFENDANT**

**R U L I N G**

The dispute between the parties arises out of Auctioneer Bill of Costs which was presented by the applicant for taxation before Mr. Cheron, Senior Resident Magistrate.

The bill was lodged by auctioneer/applicant and by consent the parties agreed to conduct the hearing by written submissions filed by both parties. A ruling was delivered on 15/2/2008 wherein the Deputy Registrar made a finding that the auctioneer was entitled to costs in the sum of Kshs.213,153/40 inclusive of VAT.

Being aggrieved by the said ruling, the appellant appealed to the High Court on grounds of jurisdiction. **Rule 55 (1) (a) and (b) of Auctioneers' Rules 1997** is the one that confers jurisdiction to the Registrar of High Court to determine the amount payable, if at all, to the auctioneer. In case where proceedings are before the High Court or where the value to be attached or repossession would bring any proceedings in connection with it with monetary jurisdiction of the High Court. And in any other case where a dispute arises as to the amount of fees payable to an auctioneer or magistrate or Board may, on application of any party to the dispute, assess the fees.

It is submitted that the proceeding giving rise to the **Auctioneers' Bill** was **RMCC No.5055 of 2004** were not proceedings in the High Court. And the value of the attached vehicle is Kshs.200,000/= as proclaimed by the auctioneer. This does not bring the dispute within the pecuniary jurisdiction of the High Court monetary jurisdiction of the High Court which is 3 million and above.

The respondent opposes this ground on jurisdiction saying that at the hearing the appellant never raised this issue of jurisdiction. However, the appellant relies on the decision of Ringera, J. (as he then was) in the case of **Ying vs. Ren – Mombasa HCCC No.128 of 1998 (OS) (unreported)** where the court held that:-

***“Jurisdiction is so basic and fundamental ... (that in its absence) the proceedings would be coram non judica and the court would be acting in vain. All its decisions and orders would be a nullity.”***

The ground No.3 on - invalid and unlawful proclamation attachment. It is submitted by appellant that **Rule 12 of Auctioneers' Rules 1997** provides the procedure to be invoked namely; the auctioneer upon receiving letter of instruction or court order shall, in case of movables, other than goods of a perishable nature, prepare a Proclamation in the prescribed form indicating the value of specific items and the conditions of each item. Such an inventory to be signed by owner of goods or where any person refuses to sign such inventory, the auctioneer shall sign a certificate to that effect.

The Proclamation here does not have the values of the properties attached and their condition. The

requirement is mandatory as provided under **Rule 12 (b)**. When this issue was raised, the auctioneer prepared a second Proclamation with values and conditions inserted. The first proclamation was signed by respondent, the second one is not signed. And there was no certificate of auctioneer.

The Proclamation does not comply with prescribed form. It does not give the true name of auctioneer namely; J.N.M. Kingoti. On this issue the respondent made no specific reply but submitted in general terms. It is my finding that there was no lawful attachment. **Rule 53** provides for penalty against the auctioneer who fails to comply. Again V.A.T. is chargeable in professional fees not on outgoings.

In the circumstances, I find that the Registrar has no jurisdiction to assess auctioneers' costs in this case and that the attachment was unlawful. I allow the application and order the attached goods to be unconditionally returned especially vehicle KAE 984 R. Costs of this application be to the applicant.

Orders accordingly.

**DATED, SIGNED and DELIVERED** at Nairobi this 7<sup>th</sup> day of July, 2009.

**JOYCE N. KHAMINWA**

**JUDGE**