



**Kirathi t/a Nairobi Channels Auctioneers v Hassan (Civil Appeal E1022 of 2022)  
[2025] KEHC 15986 (KLR) (Civ) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15986 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1022 OF 2022**

**AN ONGERI, J**

**NOVEMBER 7, 2025**

**BETWEEN**

**REAL MUNGAI KIRATHI T/A NAIROBI CHANNELS  
AUCTIONEERS ..... APPELLANT**

**AND**

**HASSAN ABDI HASSAN ..... RESPONDENT**

*(Being an appeal from the Ruling of the AUCTIONEERS LICENSING  
BOARD conveyed by Hon. K. Cheruiyot (BOARD SECRETARY) in  
DISCIPLINARY CAUSE NO. 16 OF 2022 dated 2nd November 2022)*

**JUDGMENT**

1. The Auctioneers Licensing Board ordered the Appellant to return motor vehicle No. KCZ 293J to the OCS Mariakani Police Station.
2. The Board also fined the Auctioneer Kshs. 50,000/= and ordered him to pay costs of Kshs. 20,000/=,
3. The Board noted in the letter dated 2<sup>nd</sup> November 2022 that the Auctioneer received instructions to repossess motor vehicle registration KCZ 293J on 12<sup>th</sup> October 2020.
4. On 3<sup>rd</sup> November 2020, the complainant obtained an Order from the court staying the repossession.
5. The stay orders were set aside on 20<sup>th</sup> August 2021 but the vehicle continued being detained at the police station.
6. On 26<sup>th</sup> January 2022, the Magistrate's Court in Mombasa issued an Order releasing the motor vehicle to Narim Capita Ltd.



7. The Appellant then went ahead and repossessed the motor vehicle on the basis of the previous instructions in contravention of the court Order of 26<sup>th</sup> January 2022.
8. On that basis the Board found the Appellant guilty of misconduct and fined him Kshs. 50,000/= and also ordered him to pay costs of Kshs. 20,000/= and also directed him to return the motor vehicle to the OCS Mariakani Police Station.
9. The Appellant has filed this appeal against the said Ruling on the following grounds:-
  - i. That the Honourable Board usurped the jurisdiction of the High Court as set out in Section 18 by taking over matters that were being adjudicated and pending in the Lower court being Civil Case No. E6074 of 2020 proceeded and purported to find the Auctioneers guilty of the Complaint.
  - ii. That the Board erred in law and fact in exercising jurisdiction to punish for Contempt of Court when the same is reserved for the subordinate court and superior courts particularly on a matter that they had not seized of.
  - iii. That the Board erred in law and in fact in finding that the Auctioneers had repossessed the motor vehicle in Contempt of the Court Order dated 16<sup>th</sup> January 2022 when in actual the instructing principal had in their possession court order dated 26<sup>th</sup> November 2022 in a suit the Auctioneer was not involved in.
  - iv. That the Board erred in law and fact in not following the laid down laws by not according the Auctioneer the audience to mitigate.
10. The parties filed written submissions as follows:- the appellant submitted that the Respondent defaulted a loan agreement with the Financier M/S.Narima Capital Finance which resulted on the issuance of instructions to the Appellant. this matter was then addressed in MCC/E6060 of 2020 where the court directed the release of motor vehicle KCZ 293J to the auctioneer on 1/12/2022.
11. That the respondent filed a complaint with the board while the case was pending on 2/6/2022 in disregard of the auctioneer's plea that the same was res judicata and subjudice.
12. The appellant argued that the board demonstrated that they had usurped powers that they did not have by purporting to punish the auctioneer for contempt of court when the trial court was still seized of the case.
13. That the evidence on record shows that the principal to the auctioneers had a court order dated 26/11/2022 that allowed it to repossess the subject motor vehicle and since they are not auctioneers, they delegated the same to the appellant.
14. It was the appellant's position that the Auctioneers Licensing board erred in law by not allowing the appellant the opportunity to mitigate before reaching on a verdict that is extremely punitive like requiring an auctioneer to return a motor vehicle that he did not have as a result of due process and an exorbitant fine in disregard to the respondent's pending prayers on the plaint which is ongoing.
15. Further that the board has no jurisdiction to preside over an appeal or review of matters in a lower court or superior court.
16. The respondent alternatively submitted that the appeal herein is incompetent as the appellant failed to attach a copy of the proceedings from the Auctioneers Licensing Board in the record of appeal.



17. That this omission constitutes a breach of the Court of Appeal Rules 2022 and undermines the integrity of the appellate process. the absence of these proceedings render it impossible to adequately review the case and understand the basis of the Board's decision.
18. Rule 89(1) (h) of the Court of Appeal Rules, 2022, stipulates that the record of appeal must contain "the proceedings of the superior court and certified copies of the judgment or order appealed against and the certified decree or order."
19. That the Appellant's failure to include the proceedings from the Auctioneers Licensing Board constitutes a violation of this rule, thereby compromising the completeness and accuracy of the record of appeal.
20. The respondent further submitted that Section 24(1) of the *Auctioneers Act* (Cap 526) explicitly grants the Auctioneers Licensing Board the authority to hear and determine complaints against auctioneers for misconduct.
21. The actions of the auctioneer in this case, specifically the unauthorized seizure of the motor vehicle, clearly constitute misconduct within the meaning of the Act.
22. Section 24(5) of the *Auctioneers Act* provides that the Board may impose fines or other sanctions for proven misconduct. The Auctioneers Licensing Board, functioning as a tribunal, exercises quasi-judicial powers akin to those of subordinate courts. Under Article 169(1)(d) of *the Constitution* of Kenya, subordinate courts include tribunals established by an Act of Parliament, such as the *Auctioneers Act*.
23. Therefore, the Boards actions in addressing non-compliance and disciplining auctioneers fall within its legitimate quasi-judicial mandate, validating its decisions and sanctions as being within its jurisdiction.
24. The respondent argued that the court order dated 16th January 2022 clearly stipulated that the OCS Mariakani Police Station was to release the motor vehicle to Narima Capital Microfinance.
25. There was no provision authorizing the auctioneer to seize or repossess the vehicle. The Appellant's actions were beyond the scope of the court order, amounting to an unlawful seizure. The Board correctly found this to be misconduct, as the auctioneer acted without the necessary legal authority.
26. The auctioneer did not possess a warrant of attachment or any other legal document authorizing the seizure of the vehicle.
27. According to Rule 5 and 6 of the Auctioneers Rules (Rev 2012), an auctioneer must have a valid warrant of attachment to lawfully seize property.
28. Failure to comply with this requirement constitutes misconduct under the Act, justifying the Board's decision to penalize the auctioneer for their unauthorized seizure of the vehicle
29. A search with the NTSA Motor Vehicle copies of records confirmed that the vehicle was solely registered in the Respondent's name, with no encumbrances or legal claims against it.
30. This fact underscores the illegality of the auctioneer's attempt to sell the vehicle without proper authorization.
31. The Board's findings are supported by these facts, demonstrating the auctioneer's misconduct in attempting to dispose of property without legal grounds.



32. The Board's decision to fine the auctioneer and order the return of the vehicle is further consistent with its powers under Section 24(5) of the *Auctioneers Act*, which allows the Board to impose fines and take corrective actions against auctioneers for misconduct.
33. It was thus the respondent's submission that for the aforementioned reason the appeal herein is without merit and should be dismissed with costs.
34. The sole issue for determination in this appeal is whether the Board acted within its statutory mandate or whether it usurped the jurisdiction of the courts, in punishing the Appellant.
35. The Appellant's primary contention is that the Board erred by punishing him for an act alleged to be contempt of a court order, a matter he argues is exclusively within the purview of the court that issued the order.
36. That the role of the Board is to adjudicate on professional misconduct under the *Auctioneers Act*, not to enforce court orders through contempt proceedings.
37. Furthermore, the Appellant argued that the Board's actions infringed upon the sub judice principle. The record indicates that the matter concerning the repossession of the motor vehicle was actively being litigated in the Magistrate's Court in Mombasa.
38. The principle of sub judice, as encapsulated in Section 6 of the *Civil Procedure Act*, prohibits a court or tribunal from adjudicating upon a matter that is already pending before another court of competent jurisdiction.
39. The purpose of this doctrine is to prevent parallel proceedings and avoid the possibility of conflicting judgments.
40. By entertaining the complaint and making a definitive finding on the legality of the repossession—a core issue before the Magistrate's Court—the Board risked creating a conflict of jurisdictions and failed to accord the primary court the respect and space to conclude the matter before it.
41. Regarding the Respondent's preliminary objection on the competence of the appeal for failure to include the Board's proceedings, while this is a valid procedural concern, this court finds that the substantive issues of jurisdiction raised are so fundamental that they ought to be addressed.
42. A finding that the Board acted without jurisdiction renders its entire proceedings, including the record of those proceedings, a nullity.
43. Consequently, the appeal cannot be struck out on this technical ground alone.
44. On the merits of the misconduct finding, the Board's decision is founded on a flawed premise. The Appellant acted on the instructions of his principal, Narima Capital Ltd, which was in possession of a court order.
45. While the order of 26th January 2022 directed the OCS to release the vehicle to Narima Capital, it did not explicitly prohibit a subsequent repossession by the financier through its agent, the auctioneer, especially in light of the earlier instructions and the setting aside of the initial stay orders.
46. The Board's conclusion that this constituted professional misconduct, in the context of ongoing litigation between the principal parties, was premature and effectively determined the rights of the parties in a collateral proceeding.



47. In conclusion, the Auctioneers Licensing Board acted in excess of its jurisdiction by purporting to punish the Appellant for contempt of a court order and by adjudicating a matter that was substantively pending before a court of law.
48. The Ruling dated 2nd November 2022 is therefore unsustainable. The appeal is hereby allowed. The said Ruling of the Auctioneers Licensing Board is set aside in its entirety.
49. Each party to bear its own costs of this appeal.

**DATED, SIGNED AND DELIVERED THIS 7<sup>TH</sup> DAY OF NOVEMBER 2025 VIRTUALLY VIA MT  
AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistants: Millicent/Mabishi

.....for the Appellant

.....for the Respondent

