

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**THE CIVIL APPELLATE DIVISION**  
*(Coram: A.C. Mrima, J.)*  
**CIVIL APPEAL NO. E129 OF 2024**

**-between-**

**JEREMIAH KIARIE MUCHENDU**

**T/a**

**AUTIONEERS.....APPELLANT/APPLICANT**

**ICON**

**-versus-**

**FRANCIS**

**.....RESPONDENT**

**OTIENO.....**

**RULING**

**Background:**

1. The dispute herein originates from a complaint filed by the Respondent, *Francis Otieno*, before the Auctioneers Licensing Board (hereinafter referred to as "**the Board**") against the Appellant herein, *Jeremiah Kiarie Muchendu t/a Icon Auctioneers* on 24<sup>th</sup> April 2022.
2. The complaint concerned the manner in which the Appellant levied distress for rent against the Respondent's company, *Techvile Company Limited*. The Respondent alleged *inter-alia* that the Appellant failed to issue requisite notices and unlawfully seized exempt items and tools of trade. Upon hearing the matter, the Board delivered its Ruling on 27<sup>th</sup> November 2023. The Board found the Appellant liable for failing to adhere to the Auctioneers Regulations, admonished him, and imposed a fine of Kshs. 50,000.00 alongside an order for costs.
3. Aggrieved, the Appellant filed a Memorandum of Appeal in this Court on 30<sup>th</sup> January 2024. Subsequently, the Respondent raised objection regarding the timelines of the appeal,

prompting the Appellant to file the Notice of Motion, subject of this Ruling, seeking to regularize the appeal.

**The Application:**

4. By a Notice of Motion dated 14<sup>th</sup> May 2025, brought under Sections 1A, 1B, 3A and 95 of the Civil Procedure Act, Order 50 Rule 6 of the Civil Procedure Rules, and Article 159 of the Constitution, the Applicant sought the following Orders:
  1. *THAT this honourable court be pleased to issue a declaration that the current appeal; E129 of 2024; Jeremiah Kiarie Muchendu T/A Icon Auctioneers v. Francis Otieno against the judgment of the Auctioneer Licensing Board in Disciplinary Cause No. 50 of 2022 delivered on 27<sup>th</sup> November, 2023 is properly filed;*
  2. *THAT in the alternative to prayer (1) above, this Honourable Court be pleased to grant the Appellant/Applicant leave to appeal out of time against the judgment of the Auctioneer Licensing Board in Disciplinary Cause No. 50 of 2022 delivered on 27<sup>th</sup> November, 2023;*
  3. *THAT upon grant of order (2) above, the current appeal; E129 of 2024; Jeremiah Kiarie Muchendu T/A Icon Auctioneers v. Francis Otieno be deemed as duly filed and served;*
  4. *THAT costs of this Application be in the cause."*
5. The Application was supported by the affidavit of *Jeremiah Kiarie Muchendu*. He deposed that the judgment in Disciplinary Cause No. 50 of 2022 was delivered on 27<sup>th</sup> November 2023 in the absence of parties and was only dispatched to them on 11<sup>th</sup> December 2023. He contended that under Section 25 of the Auctioneers Act, the 30-day appeal period commences from the date of receipt of the written notice of the decision. He averred that taking into account the date of dispatch (11<sup>th</sup> December 2023) and the Christmas recess (21<sup>st</sup> December to 13<sup>th</sup> January), the appeal filed on 30<sup>th</sup> January 2024 was within time. Alternatively, he deposed that any delay was inadvertent and minimal (9 days), occasioned by the Board's delay in notifying

the parties, and that no prejudice would be suffered by the Respondent.

### The Submissions

6. In its written submissions dated 10<sup>th</sup> September 2025, the Applicant argued that Section 25(1) of the Auctioneers Act is specific and superior to the general provisions of the Civil Procedure Act regarding appeals. Counsel argued that the section expressly provides that an aggrieved person may appeal "*within thirty days after receipt by him of written notice of such decision.*" Relying on the case of *Kifedha Limited -vs- George Mbagu Kinuthia T/A Immediate Auctioneers & Anor* [2022] eKLR, the Applicant submitted that the High Court has previously held that the statutory appeal period under the Auctioneers Act is activated by the receipt of the written notice, not merely the delivery of the decision. The Applicant further relied on Order 50 Rule 4 of the Civil Procedure Rules, which excludes the period between 21<sup>st</sup> December and 13<sup>th</sup> January from the computation of time for filing pleadings. The Applicant argued that when time is calculated from the date of receipt (11<sup>th</sup> December 2023) and the recess period is excluded, the filing on 30<sup>th</sup> January 2024 fell squarely within the statutory timeline.
7. In the alternative, it was its case that should the Court find the appeal out of time, the exercise of discretion under Section 79G of the Civil Procedure Act would come to its aid. To that end, the decision in *Hajar Services Limited -vs- Peter Nyangi Mwita* (2020) eKLR and *Dominic Obuya Mikwaya -vs- South Nyanza Sugar Company Limited* [2020] eKLR, were relied upon where it was observed that the failure to notify parties of a judgment constitutes a "good and sufficient cause" for delay.
8. They further relied on *Stanley Kangethe Kinyanjui -vs- Tony Ketter & 5 Others* [2013] eKLR to argue that the appeal raises

triable issues and should not be shut out on technicalities, consistent with *Article 159(2)(d)* of the *Constitution*.

### **The Respondent's case:**

9. The Respondent, *Francis Otieno*, opposed the application through his Replying Affidavit sworn on 29<sup>th</sup> July 2025. He deposed that the application was misconceived, incompetent, and an afterthought, filed only after his advocates raised the issue of lateness before the Deputy Registrar. He averred that extension of time is not a right but a remedy for the deserving, and the Applicant had failed to provide a sufficient basis for the Court to exercise its discretion.
10. The Respondent contended that the Applicant had not accounted for the delay to the satisfaction of the Court and that he stood to be prejudiced by being kept away from the fruits of the Board's decision. He further deposed that the appeal lacked merit as the grounds were mere denials.

### **The Submissions**

11. In his written submissions dated 1<sup>st</sup> October 2025, the Respondent argued that the appeal filed on 30<sup>th</sup> January 2024 was a nullity because it was filed out of time without prior leave of the Court. heavy reliance was placed on the Supreme Court decision in *Salat -vs- Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR).
12. The Respondent further submitted that under *Section 79G of the Civil Procedure Act*, time runs from the date of the decree or order, and the Applicant had failed to prove good and sufficient cause for the delay. Citing the case of *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] eKLR, the Respondent argued that the burden lies with the applicant to explain the delay, and where there is no explanation, there is no indulgence. The Respondent maintained that the Applicant had been dilly-dallying and that the delay was inordinate.

### **Analysis:**

13. From the pleadings and submissions, the following issues emerge for determination:

- i. *Whether the Appeal filed on 30<sup>th</sup> January 2024 was filed within the statutory timelines prescribed by the Auctioneers Act.*
- ii. *Depending on (i) above, whether the Applicant has satisfied the criteria for leave to appeal out of time.*

14. The above issues will now be dealt with below.

**[a] Whether the Appeal filed on 30<sup>th</sup> January 2024 was filed within the statutory timelines prescribed by the Auctioneers Act:**

15. The central contest regarding the competence of the appeal lies in the computation of time. The Respondent relies on the general provisions of Section 79G of the Civil Procedure Act, which mandates filing within 30 days of the decision. However, the jurisdiction of the Board and the appellate mechanism are governed by the Auctioneers Act.

16. *Section 25(1) of the Auctioneers Act provides:*

***A person aggrieved by a decision of the Board under this Act may, within thirty days after receipt by him of written notice of such decision, appeal against the decision to the High Court.***

17. The foregoing provision is distinct from the general rule in the Civil Procedure Act where time runs from the date of the ruling. The Auctioneers Act specifically ties the commencement of the appeal period to the receipt of written notice. The Applicant has deposed that while the Ruling was delivered on 27<sup>th</sup> November 2023, it was delivered in the absence of parties and only dispatched/notified to them on 11<sup>th</sup> December 2023. The fact regarding the date of dispatch has not been effectively controverted by the Respondent.

18. This Court is persuaded by the authority cited by the Applicant, ***Kifedha Limited v. George Mbagu Kinuthia T/A Immediate Auctioneers & Anor*** [2022] eKLR, where the Court held thus: -

*The Appellant should have moved to the High Court under Section 25 of the Auctioneers Act within thirty days of receiving the written notice of the Board's decision... This authority underscores that what activates the statutory appeal period is the date of receipt of the written notice, and not the date when the Board pronounces its decision.*

19. Consequently, time for the Appellant began to run on 11<sup>th</sup> December 2023. In addition, Order 50 Rule 4 of the Civil Procedure Rules provides that the period between 21<sup>st</sup> December and 13<sup>th</sup> January (both days inclusive) shall be omitted from any computation of time for the filing of pleadings or doing any other act. From 11<sup>th</sup> to 20<sup>th</sup> December, the Applicant utilized 9 days. Time froze from 21<sup>st</sup> December to 13<sup>th</sup> January. Time resumed on 14<sup>th</sup> January and the Appellant had 21 days which lapsed on or about 4<sup>th</sup> February 2024. As the Appeal was filed on 30<sup>th</sup> January 2024, it was well within the regular timelines for filing an appeal.
20. With the foregoing finding, the second issue collapses. Consequently, the prayer for a declaration that the appeal is properly filed is merited. The alternative prayers for leave to appeal out of time become moot, although this Court notes that even if the appeal were technically out of time, the delay would have been excusable given the period taken by the Board to dispatch the ruling to the Appellant, a factor which would constitute sufficient cause.

**Disposition:**

21. Accordingly, the Application is merited and the following final orders hereby issue: -

**[a] The Notice of Motion dated 14<sup>th</sup> May 2025 succeeds to the extent that the appeal herein, Civil Appeal No. E129 of 2024, filed on 30<sup>th</sup> January 2024 against the judgment of the**

**Auctioneers Licensing Board in Disciplinary Cause No. 50 of 2022, was filed within the requisite statutory timelines and is properly on record.**

**[b] The Respondent's objection regarding the competence of the appeal is hereby dismissed.**

**[c] Costs of this application shall be in the cause.**

**[d] The trial file be availed for further directions on the appeal before the Hon. Deputy Registrar on a date to issue.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 20<sup>th</sup> day of February, 2026.**

**A. C. MRIMA  
JUDGE**

**Ruling virtually delivered in the presence of:**

**No appearance** for the Appellant/Applicant.

**No appearance** for the Respondent.

**Michael/Amina** - Court Assistants.