

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI

civil misc appl 329 of 99

WILSON GITU MUNIU.....APPELLANT

VERSUS

AUCTIONEERS LICENSING BOARD.....RESPONDENT

RULING

The applicant herein is an Auctioneer. A complaint was leveled against him in the course of his trade and the same went before the Auctioneers' Licensing Board. The complaint is marked WGM1. Annexure WGM3 are the board proceedings showing that the board sat a decision was taken where by the appellant/applicant was fined 50,000.00 to be paid within 30 days failing which he was to be required to show cause as to why his licence should not be suspended. The appellant/applicant became aggrieved by that decision and he has filed an appeal herein. The appeal is dated 12.4.2007 and filed the same date.

The appellant has filed an application subject of this ruling dated 17th May 2007 and filed on 18.5.2007 prayer 2 thereof seeks stay pending appeal and costs. There is no opposition to the application. That notwithstanding the applicant contends that the application has merit because the appeal is meritorious as the decision of the board is tainted with illegality as an unauthorized person sat on the board and as such the entire proceedings as well as the decision are a nullity.

(2) That if stay is not granted he is likely to be suspended, in denying him his means of livelihood which will not be compensated for.

On the courts assessment of the facts herein it is clear that the state was given an opportunity to file their papers in opposition to the application and their failure to do so renders the application unopposed. The foregoing finding notwithstanding, the applicant has to satisfy the ingredients for granting stay pending appeal set out in order 41 rule 4(2) of the Civil Procedure Rules. The first ingredient of filing the application promptly has been satisfied because the appeal was presented on 12.4.2007 while the application was filed on 18.5.2007. The same was therefore filed without undue delay.

As for the second ingredient of suffering irreparable loss this court takes judicial notice of the fact that the work of an Auctioneer, is one where the Auctioneer is only paid for work done. This means that if suspended, he will not be able to carryout his trade. And if no trade is carried out there will be no earnings and that will be a loss of income. The opposite party is simply a disciplinary organ which assumes no responsibility to make good for the loss suffered by the disciplined auctioneer, should the appeal succeed. This being the case a like hood of irreparable loss arising are not remote. There is no fund from which compensation can issue from the board to the auctioneers.

As for security for the decree to be passed upon the Auctioneer, the applicant has not offered any. Failure to make an offer is no bar to the court making an order for a conditional stay. This court is of the opinion that this is a proper case where conditional stay can be made.

As for the existence of an arguable appeal, if indeed the board that issued the orders complained against

was improperly constituted, the applicant has a valid point to take up on appeal.

For the reasons given the court is inclined to grant conditional stay pending appeal. The applicant is granted stay pending appeal on condition that he deposits Kshs 50,000.00 into court within 60 days from the date of the reading of this ruling.

In default the stay order will lapse.

(3) Costs will be in the cause.

DATED, READ AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2007.

R. NAMBUYE

JUDGE