



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KERICHO

ELRC NO. 10 OF 2016

KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS(KUDHEHIA)...CLAIMANT/RESPONDENT

-VERSUS-

THE MANAGEMENT OF TEA HOTEL.....APPLICANT

AND

RAVJI DEVJI CHHABHADIA

KANJI DEVJI CHHABHADIA

CHANDRAKANJI DEVJI CHHABHADIA

SHASHIKANT KANJIBHAI PINDORIYA.....PURCHASERS/RESPONDENTS

AND

YAS ANGWAN HOLDINGS LIMITED.....PROPOSED INTERESTED PARTY

TEA HOTEL LIMITED.....PROPOSED INTERESTED PARTY

RULING

1. Before me for determination are Four applications. The first application is a Notice of Motion Application dated 26th April, 2021, filed by the Applicant herein under Certificate of urgency seeking interalia for Orders that:-

a. This application be certified urgent and be heard forthwith and ex-parte in the first instance.

b. Pending hearing and determination of this application, the Honourable court be pleased to issue an order of injunction restraining the Respondents, their agents, servants, employees, assigns or otherwise howsoever from in any way dealing with, entering taking possession, disposing of, selling, charging or otherwise interfering with the title of L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres (hereinafter "the subject properties").

c. Pending the hearing and determination of this application, the Honourable court be pleased to issue an order of mandatory injunction compelling the Chief Land Registrar, Kericho to cancel the illegal entries on L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres.

d. The Honourable court be pleased to set aside the purported sale and eventual transfer of L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 to Ravji Devji Chhabhadia, Kanji Devji Chhabhadia and Shashikant Kanjibhai Pindoriya respectively, the above purported Purchasers;

e. The Honourable court be pleased to issue a mandatory injunction compelling the Respondents to file before this court the true and just accounts including, but not limited to the exact amount of money paid by Ravji Devji Chhabhadia, Kanji Devji Chhabhadia and Shashikant Kanjibhai Pindoriya to date and the amount paid to each of the employees herein pertaining to

the alleged sale of L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres.

f. The Honourable court be pleased to issue a mandatory injunction compelling Hezron Getuoma Onsongo T/A Hegeons Auctioneers to file before this court the details pertaining the public auction, including but not limited to date, time and place of the alleged auction, the records of the auction, bidders and the respective bids pertaining to the alleged sale of L.R.No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres.

g. The Honourable court be pleased to order that license of Hezron Getuoma Onsongo T/A Hegeons Auctioneers be revoked forthwith;

h. The Honourable court be pleased to exercise its disciplinary powers vested under section 56 of the Advocates Act and do mete out such punishment to one, Kemboi Gilbert Kiprono (P.105/13154/16), Advocate for his misconducts herein committed by the said Advocate severally in the course of these proceedings.

i. such other orders as the justices of this case permits in the circumstances;

j. Costs of this application be awarded to the Applicant.

2. The application is based on the following grounds; -

a. The applicant is situated on two plots to wit, LR No. KERICHO MUNICIPALITY BLOCK 4/295 (Originally LR 631/22/R/1 and LR 631/9/1/A measuring 5.831 acres and LR KERICHO MUNICIPALITY KERICHO BLOCK 4/313(Originally 631/175) measuring 20.449 acres.

b. That the two parcel of land are distinct with separate title documents.

c. That, Kemboi Gilbert Kiprono, the Claimant/Respondent's Counsel herein in collusion with one, Hezron Getuoma Onsongo T/A Hegeons Auctioneers conducted a sham/fraudulent auction with a predetermined intention of divesting the Applicant of its hard earned BLOCK 4/295 (hereinafter referred to as "the subject property").

d. upon conducting the auction, the advocate together with the auctioneer allegedly obtained a forged and incomplete Title Deed to BLOCK 4/295 aforesaid.

e. Oblivious of the existence of the said fraudulent transfer and forged Title Deed and have now written to the Applicant demanding payment by the Applicant of unsubstantiated Kshs. 5,791,882/= to enable them transfer the property!

f. The Advocate has to date failed to produce before this court the full records of the proceeds of the sale, if the same was conducted, and how the same has been utilized.

g. The Purchasers further purported to transfer the entire BLOCK 4/295 measuring 5.831 and presently valued at Kshs.423,512,500/= instead of one acre of the separate BLOCK 4/313 which the Purchasers had valued at Kshs.100,000,000.

h. It is alleged that, no actual public auction ever took place but the subject property was sold to the purported purchasers at a figure lower than the value of the property.

i. Prior, to the alleged sale the Respondents only conducted valuation for BLOCK 4/313 but proceeded sell BLOCK 4/295 while assuming that the two properties are the same.

j. it is averred that no Notification of Sale documenting the expected purchase of BLOCK 4/295.

k. The persons declared to be the purchasers did not pay 25% of the price at the fall of the hammer or even soon thereafter as provided by the law and to date the Purported Purchasers have never met the full purchase price of the subject property.

l. The illegality/irregularity and/or fraud by the Respondents and the Auctioneer complained of herein has occasioned substantial injury to the Applicant.

m. The conduct of Kemboi Gilbert Kiprono Advocate for the Claimant/Respondent herein and Hezron Getuoma Onsongo T/A Hegeons Auctioneers, is unprofessional and merits sanction by the Honourable court.

n. That the value of the property LR Block 4/295 is valued at Kshs 423,512,500 vis a vis the claim of Kshs 33,142,600 and to allow the state of affairs will prejudice the application.

o. That the Respondents has already been paid their dues and signed an agreement to that effect will not suffer any prejudice if he application is allowed.

3. The Application is supported by the Affidavit of Musa Koech, the director of the Applicant deposed upon on the 26th April, 2021.which basically reiterated the grounds of the application herein.

4. The application is opposed by the claimant/ Respondent herein vide its replying affidavit deposed upon by Ruth Ngelechei on the 7th May, 2021.
5. According to the claimant, the application herein is ingrained with falsehood and most issue raised in the application herein are res judicata having been substantially determined in application dated 9.3.2019 and application of 16.12.2019, notice of appeal dated 14.4.2020 application dated 14.6.2018 which was dismissed on 9.10.2018 and application of 16.3.2021 which was withdrawn.
6. She stated that the instant case was taken over by Musa Koech the brother to Davy Koech who litigated all the previous matters and signed the payments of all employees' dues upon redundancy on the 24.4.2018 together with TEA HOTEL directors Kimalel Chumo and William Kettyenya.
7. It was admitted that the Applicant is situated on two parcels of land being LR No. KERICHO MUNICIPALITY BLOCK 4/ 295 measuring 5.831 acres and LR KERICHO MUNICIPALITY BLOCK 4/313 measuring 20.449 acres. Further that the current advocate on record only came in after execution had been completed, which execution followed due process and all documentations were filed in Court. therefore, that the orders sought against Advocate Gilbert Kemboi and Auctioneer Hezron Getuoma are without any basis.
8. According to the claimant the process leading to finalization of this matter was that, there was a consent entered between the claimant and the Respondent of Kshs. 5,000,000 for settling the salary arrears, Kshs 2,856,028 being terminal dues be paid to retirees at Kshs.155,000 per month with effect from end of August, 2016 and the Applicant herein undertook to pay the claimant's membership monthly salaries when deemed due. These consent was never implemented and the claimant members were instead declared redundant.
9. That the claimant and the Applicant herein initiated negotiations in view to settling payments due to all employees and vide a letter of 24.4.2018 the Applicant herein agreed to settle salaries and wages arrears, retirees and redundancy packages.
10. The applicant herein later failed to pay the decretal sum and the matter was set down for execution vide a court order dated 31.5.2018 prompting the Applicant herein to ask its bank to make a payment via RTGS of Kshs 47,980,306.55. the amount payable to the claimant rose to Kshs 51,463.694.
11. That a valuation of the property was conducted by the Applicants chosen valuer, one Primeland Limited and a report dated 26.6.2018 was issued. Later vide a report dated 16.12.2019 the Government values made an independent valuation. The value of the said property was capped at Kshs 110,000,000.
12. The Applicant through their advocates pursued for a purchaser of the land leading to sale of LR No. KERICHO MUNICIPALITY BLOCK 4/295 via private treaty and BLOCK 4/313 was to be spared. Subsequently Hegeons auctioneers were given green light to sale part of the BLOCK NO.4/295 and the auctioneers advertised it for sale on daily nation on the 23.8.2018. and another advertisement featured on the Star Newspaper on the 9.1.2019 and the auction as conducted in a public manner at Uhuru Gardens opposite Kericho law Court on the 24.1.2019. That nine person bid for the said land and the purchasers herein were the highest bidders which land was sold at the fall of the hammer and a report on the said auction was filed in this court on the 7.2.2019 .
13. That the 25% paid at the fall of the hammer were used to make part payment to the employees of the claimant including the directors of the Applicant Kimalel Chumo and Edgar Mutai who were also beneficiaries.
14. The current firm of advocates being Kemboi Chambers Advocates were instructed to come on record on the 7th October, 2019 after the execution process had been completed with regard to sale of BLOCK NO. 4/295. That the current advocates only came on record to proceed and oversee and ensure the transfer of BLOCK NO.4/295 to the purchaser herein which advocates obtained orders in favour of the purchasers on the 4.11.2019 directing that certificate of sale be issued to the purchasers herein and the deputy registrar to sign transfer lease forms to effect transfer to the purchasers and the respondent directed to vacate of the said property.
15. On 20.11.2019, the Court made further orders to the effect that the land registrar Kericho County to transfer lease from Brook Bond Limited to the purchasers and issue a new certificate of lease to the new purchasers. further that National Land Commission gave a go ahead for the transfer to be effected.
16. That the Applicant herein was aggrieved by the turn of events and moved to court of appeal in Nyeri Appeal case number 38 of 2020 and Nyeri appeal case number 52 of 2020 seeking for orders similar to the current application but the said application was dismissed and the claimant therefore made final payment of the workers through Kshs 22,000,000 received from Hegeons auctioneers from sale conducted on 24 January, 2019.
17. At the time of sale, the applicant owed the government land rates of Kshs. 10,906,478 and the alleged Kshs 5,791,882 mentioned in paragraph 19 of the applicants supporting affidavit were negotiated rates which were never paid till the land was sold. The rates were therefore paid by the purchasers and a clearance issued to them bearing their names.
18. That the firm of Kemboi Chambers Advocates had on several occasions written to the applicant informing them on the conclusion of the matter and the need to furnish them with accounts for the purposes of transferring the net balance of the purchase price realized from the auction sale. But that there was wrangles between the applicant's directors forcing the claimant to withhold the residue of the sale till the wrangles are resolved.
19. That due to the unending litigations and wrangled between the two factions of Tea Hotel Limited the purchasers instructed the claimant and their advocates not to release the balance of the purchase price till the issues are finalized as the purchasers were apprehensive of the outcome of the litigation.

20. That prior to the filling of this application, Yas Angwan Holding Limited, one of the directors of Tea Hotel limited have been in negotiation with the claimant with a view of harmonizing accounts and conducting an audit that will facilitate the transfer of the balance of the purchase price to the applicants and so far they have conducted three meetings however the other faction being Sololo Holding are adamant and pressing for the issue to be resolved in Court.

21. In opposing to the application, the auctioneer Hezron Getuma Onsongo, filed a replying affidavit deposed upon on the 11.8.2021. The basis of opposing the application herein are as follows; -

a. According to the auctioneer the issues raised in this application have been raised severally in this Court and even the Court of Appeal and all have been dismissed.

b. The auctioneers were instructed by the claimant vide a letter of instruction dated 4.6.2018 to carry out execution and sale LR NO Kericho Municipality Block 4/313 in order to recovers arrears due to its members who were the Respondent employees of Kshs 33,142,600.a notification of sale was issued on 5.6.2018 which was served on the same day upon the Applicants.

c. That on the same day he sought for prohibitory order to stop any dealing on the said land pending their investigation on the title which was granted by the Court vide the order issued on 5.6.2018. after investigating the said property, the auctioneer discovered that the property was registered to Kenya Tourism Development Corporation(KTDC) therefore that the title was not suitable for forced sale.

d. That on further investigation the auctioneers were informed that the applicant offered for sell LR NO Kericho Municipality Block 4/313 to Dominor limited for Kshs. 22,000,000 and Dominor had accepted the offer on 23.1.2018. Further that the applicants' directors had resolved vide a resolution dated 12.2.2018 to sell the sale land. The Applicants and the interested parties entered into a sale agreement dated 19.2.2018 and a deposit of Kshs112,500/= paid.

e. Despite the above, the auctioneer caused the said title to be advertised on star newspaper on 8.6.2018. After the said advertisement the Respondent rushed to Court to stop the sale of the parcel of land which was granted and the parties given 7 days to negotiate a settlement.

f. Subsequently, negotiation began and the parties agreed to Kshs. 51,463,694.30 vide a letter dated 5.1.2019 which attached amount due to each former employee and their account numbers. This was inclusive of the claim by Ndege Chai Sacco. The auctioneers' fees were also agreed at Kshs. 3,891, 521.60

g. During the said negotiation the Applicant offered the auctioneers parcel number LR NO Kericho Municipality Block 4/295 in place of LR NO Kericho Municipality Block 4/313. The process of sale of the later parcel of land began. Two valuation were conducted on instruction of the claimant and on instruction of the Applicant. The claimant used Legend valuers who valued the property at Kshs 54,000,000 while Primeland Limited for the Applicant valued the property at Kshs. 30,150,000.

h. The property was advertised for sale in the Star Newspaper on the 23.8.2018 for auction on 30.8.2018. However, on the material day there were no bidders. This forced the auctioneer to serve a new notification of sale on 25.10.2018 and advertised the sale on star newspaper on 9.1.2019 for public auction on 24.1.2019 which attracted several bidders and the highest bidder was the purchaser herein for Kshs110,000,000. 25% was paid by the purchaser at the fall of the hammer and the purchaser was issued with a memorandum of sale and certificate of sale. The claimant and the Court was notified of the sale.

i. The claimant then instructed the auctioneers to pay the non-staff as per the list issued and the auctioneer paid the claimants members a total sum of Kshs. 22,000,000 and the balance of Kshs 5,500,000 was distributed as per the directions of the Applicants.

j. The balance that remained with the auctioneer was Kshs 3,220,000 which was to be used as his professional fees leaving fees deficit of Kshs 671,521.60which remain unpaid to date.

k. That several applications ensued therefrom leading to the appointment of Kemboi and Cosmas advocates (Now trading as Kemboi Chambers Advocates) on 7.10.2019 to defend the said applications.

l. The auctioneers contend the prayer for revocation of its license is farfetched and in any case this Court lack jurisdiction to grant the said prayer.

m. The auctioneers urged this Court to dismiss the application herein with costs.

22. On 14th July, 2021, Kemboi Chamber Advocates filed a chamber summons Application, pursuant to Order 34(1) &(2) of the Civil Procedure Rules 2020 and other enabling provisions of law seeking the following Orders;-

a. The Application be certified urgent and service thereof be dispensed with in the first instance.

b. The above named Respondents do appear and state the nature and particulars of their claim to the subject matter in dispute for the balances held by the Applicant after claimant's members. have been paid their total claim of Kenya Shillings 51, 463, 694.30.

c. The Honorable Court do issue directions on whether the Applicant should remit Kshs 6.898.677.78/=-. to Ndege Chai Savings and Credit Corporative Society being the loan deducted at source by the Respondent for former retirees with loans

but never remitted.

d. The Honorable Court do issue directions on whether the Applicant should remit Kshs. 3,800,000/ to the firm of Migiro & Company Advocates Being Advocates Client Bill of cost dated 26 March 2021 as consented by Nelson Migiro and the directorship of the 1& 3d respondent on 3 may. 2021 vide miscellaneous application number 14 of 2021.

e. The Honorable Court do issue directions on whether the Applicant should remit Kshs. 10,716,435.13/= to the claimants being the final payment of monies owed by Kenya Revenue Authority after deduction at source but never remitted as PAYEE.

f. The Honorable Court do issue directions on whether the Applicant should remit the net balance of the purchase price 1, 2 and 3 Respondents, or Yas angwan Holdings Limited and In the alternative, deposit the monies held by the applicant into the Court Account for their claim and collection.

g. Whether the applicant should pay the balance of Kshs 25,046,266.59 less taxed party and party Bill of costs for both court of appeal in NYR 38 of 2020 and High Court as well as related supported expenses.

h. The costs of this Application be borne by the Respondents.

23. The grounds in support of this application are as follows; -

a. That the claimant had moved this Court on the 29.1.2016 seeking for terminal dues arrears of Kshs. 4,662,314 for regular employees and Kshs 230,520 for casuals.

b. On 25.7.2016 a consent was reached to the effect that the Respondent were to pay the salaries of the claimant's membership when dues and retirees arrears were to be paid with effect from the need of August, 2016.

c. That the Respondent failed to honor the said consent and an order of 31.5.2018 authorized the sale of 1st and 3rd Respondents property being LR NO Kericho Municipality Block 4/313 for claim of a cumulated sum of Kshs 33,142,600 which rose to Kshs 47,980,306.55 and later Kshs 52,463,694.30, upon addition of the loan deducted by the Respondents from the claimants and never remitted.

d. A decree dated 4.6.2018 was signed by the Court authorising the sale of LR NO Kericho Municipality Block 4/313 which was followed by a notification of sale dated 5.6.2018 where the Court okayed execution.

e. On 19.3.2016 the 1st and 3rd Respondent declared the employees redundant which redundancy was to take effect on 1.4.2018 and 27.6.2018. Payment schedule was released to Barclays Bank for payment of worker's dues which were at Kshs 47,980,306.55 which amount was later enhanced to Kshs. 51,463,694.30 because the 1st and 3rd Respondent used to deduct loan for Ndege Chai Savings and Credit cooperative society and failed to remit. Also that the Respondent herein failed to remit PAYE deducted for KRA amounting to Kshs 10,716,435.13.

f. The Respondent advocates Mr. orina pleaded with the claimant not to sale LR NO Kericho Municipality Block 4/313 and instead offered for sale LR NO Kericho Municipality Block 4/295 by private treaty vide a letter to Hegeons auctioneers dated 16.7.2018 to realize the Kshs 51,463,694.30.

g. The claimant considered the sale of the offered title for the reason that the lease in LR NO Kericho Municipality Block 4/313 was registered under Kenya Tourism Development Corporation with an expired lease while the lease LR NO Kericho Municipality Block 4/295 had a renewed lease of 50 years from 1.1.2009 and registered under Brook Bond Limited. Further that the two titles had been released to Tea Hotel Limited but they were yet to be transferred into their name.

h. LR NO Kericho Municipality Block 4/295 was valued by Primeland limited at Kshs 110,000,000 which was sold via public auction to the highest bidder Chandrakant Devji Chhabhadia who paid 25% being Kshs 28,000,000 At the fall of hammer where the sum of Kshs 22,000,000 was paid to the claimant and the balance were paid to the Respondent's directors and professionals conducting the sale.

i. The Court on 24.11.2019 issued Orders for the transfer of lease to the purchaser to facilitate the release of the balance of purchase prices of 75% to the workers. The purchaser was handed over the title in LR NO Kericho Municipality Block 4/295, Official search and green card issued on 6.1.2020, certificate of sale issued by the court dated 6.11.2019 together with beacon verification certificate dated 6.12.2019. Then the land rates were borne by the Respondents herein. Subsequently the National Land Commission gave green light for the transfer and issued letter of no objection on 7.5.2020.

j. That several applications were made to reverse the said sale however that the Court sitting in various Court in Kericho Nyeri, AND Nairobi dismissed the application therein.

k. The applicant herein stated that his firm does not have interest in the said sale save for the decretal sum, of Kshs 51,463,694.30 inclusive of Ndege Chai savings and credit Corporative Society loan, Legal fees for the firm of Migiro and company Advocates, PAYEE meant for KRA, their taxed party Bill of costs both for the Court of appeal and High Court and supported expenses.

l. The applicant also avers that during remittance of the net residue he will factor in Kshs 6,348,102 being unpaid accumulated land rent owing to the county government of Kericho that had not been paid by the Respondents and Kshs 514,103 additional land rent together with subsequent supported expenses.

m. He contends that he never acted in collusion with the claimant as alleged and that he is willing to transfer the balance of the purchase price after deductions stated above or as the court may direct.

24. The application herein is also supported by an affidavit sworn by Kemboi Gilbert on the 14th July, 2021. The affidavit basically reiterates the grounds in the application.

25. The Purchasers in response to the Application by Kemboi Chambers Advocates dated 14.7.2021 filed a replying affidavit deposed upon by one of the purchasers Chandrakant Devji Chhabhadia on his behalf and on behalf of the other purchasers.

26. The purchasers aver that they are innocent purchasers of valuer who have paid the entire sum of Monies which was paid as flows; Kshs 28,000,000 deposited on 25.1.2019 as deposit at the fall of the hammer, Kshs 8,250,000 by RTGS on 6.11.2019 for stamp duty, Kshs 73,750,000 by RTGS on 16.4.2020 being balance of the purchase price all adding up to Kshs. 114,680,000.

27. That they charged one of their properties being Kisumu Municipality Block 4/ 136 to secure a loan of Kshs. 95,000,000 from I& M Bank to purchase the said property.

28. The Purchasers also avers that they paid land rent in respect of the said property to allow transfer of the same which was the responsibility of the Vendors (the respondents herein).

29. The purchasers agreed to the payment of sums due to Ndege Chai Savings and Credit Cooperatives Society however objected to payment of fees from the firm of Migiro and Company advocates for the reason that the firm of Migiro and Company advocates had been instructed with regard to sale of LR NO Kericho Municipality Block 4/313 which is not the subject of this application. The purchasers also objected to payment of PAYE owed to Kenya Revenue Authority as KRS has powers of recovery unpaid tax under Income Tax and Tax Procedure Act.

30. The purchasers therefore urged this Court to order for the monies held by Kemboi Chambers advocate to be retained by the said firm till all application and appeals are heard and determined.

31. The Third Application, is by Migiro and Company Advocates dated 21st July, 2021 brought pursuant to section 1A,1B, 3 & 3A of the civil procedure Act, Order 1 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of law seeking for Orders that;

a. This application be certified urgent.

b. The Honourable Court be pleased to enjoin the proposed interested party as a party to these proceedings and to allow the proposed interested party to participate in these proceedings as an interested party.

c. This Honourable Court be pleased to grant the proposed interested party leave to file its pleadings within 7 days from the date of being enjoined as a party in these proceedings.

32. The application is supported by the grounds on the face of the application and the supporting affidavit deposed upon by Nelson Ongera Migiro on the 21st July, 2021.

33. The Applicant herein stated that his firm was instructed by the Applicants to defend them and the matter was concluded by consent entered on 26.7.2016. their legal fees were not paid by the applicant informing the filling of Misc. Application number 14 of 2021 and a bill of costs dated 26.3.2021.

34. The Bill of costs was settled by the parties through a consent entered on 3.5.2021 and filed in this Court on 4.5.2021 at agreed all-inclusive sum of Kshs 3,800,000.

35. The Applicants are yet to honor the said Consent to date informing the need for the firm herein to be enjoined in this Suit.

36. The 1st Respondent, management Tea Hotel, opposed the application and file a replying affidavit sworn on 14.9.2021 by Musa Koech, one of the directors of the Applicant.

37. The applicant's affiant avers that the application is misconceived as the firm of advocates seeks to be joined to these proceedings when their participation will not add value to the proceedings.

38. The affiant denied signing the consent that settle the legal fees of the firm of Migiro at Kshs. 3,800,000. Further that the applicant learnt of the said consent when the Migiro advocates filed this Application.

39. It is averred that the issue of payment of legal fees can be dealt with without the need for the firm of advocates to be enjoined in these proceedings.

40. That the joining of the firm of advocates to these proceedings are not going to aid in any way the just and expedite determination of the issue raised in this suit therefore the firm of Migiro and co advocates are not a necessary party in the proceedings herein. Further that to join the firm of advocates into these proceedings would not only delay the matter but embarrass proceeding herein.

41. The fourth application is the one Ndege Chai Sacco Limited dated 20.9.2021 filed pursuant to section 3A, 1A, 1B, of the Civil Procedure Act, Order 1 Rule 10(2) of the Civil Procedure Rules 2010. The application herein seeks the following Orders;-

a. That this Application be certified Urgent

b. That the Honourable Court be pleased to enjoin the proposed interested party (Ndege Chai Sacco Limited) in this chamber summons application

c. That the Honourable Court issues directions and or orders as will further the course of justice

d. That the costs of this Application be in the cause.

42. This application was opposed by the 1st Respondent herein vide a replying affidavit deposed upon on 23.11.2021 by Musa Koech, the director of the Applicant.

43. According to the affiant herein the application herein was filed without regard to the banal principles and law regarding joinder of parties.

44. It was stated that the applicant herein has not stated in its application what it intends to do in the proceedings if joined. Therefore, that the addition of this party to these proceedings will not add any value to the proceedings and only serve to embarrass the proceedings herein.

45. The affiant herein contends that the applicant herein has a separate recourse against it which issue can be addressed in a separate forum and not these proceedings.

46. The affiant therefore urged this Court to disallow this application.

47. All the applications above were disposed of by way of written submissions with Kemboi Chambers Advocates filing their submissions on 4.10.2021, the Management Tea Hotel (1st Respondent) filed their submissions on 29.11.2021 and another set on 3.12.2021, the claimants filed submissions on 17.12.2021, the Auctioneers together with the purchasers both filed their respective submission on 20.12.2021 while Tea Hotel filed its submissions on 21.12.2021.

1st Respondent (The management Tea Hotel) Submissions.

48. The Respondent herein filed its first set of submissions on the 29.11.2021 in support of its application of 26.4.2021 and another set of submission in opposition of the Application dated 14.7.2021.

49. The Respondent herein in support of its application of 26.4.2021 identified five issue for determination; whether there was a valid sale of block 4/295, whether the impugned sale should be set aside, whether the Honourable Court should order that the license of Hezron Getuoma Onsongo T/A Hegeons Auctioneers be revoked, whether the Honourable Court should exercise disciplinary powers over Kemboi Gilbert Kiprono Advocates and who should bear costs of the application.

50. On the first issue it was submitted that this Court relies on the Civil Procedure Rules in the execution of its decrees and Orders as aptly provided for under Rule 32 of this Court Rules. Consequently, the respondent submitted that the sale of Block 4/295 was not lawfully conducted and the said sale was tainted with fraud and numerous irregularities for the reason that there was no decree capable of being executed, there was no letter of instruction issues to the auctioneers, no notification of sale was issued, there was only 15 days' notice instead of 45 days, no certificate of service, the newspaper advert for the auction was misleading in terms of venue for public auction and the size of the land, contradicting list of bidders, the 25% was not paid at the fall of the hammer, forged memorandum of sale, no accountability of proceeds, no attached certified bank statements, and the balance of purchase price was not paid within the 90 days.

51. It was submitted that the basis of sale of the Respondents parcel of land was on accumulated salary arrears of Kshs. 4,662,314 for permanent employees and Kshs. 230,530 for casual employees, which the claimant increased to Kshs. 51,463,694.30 without any justification.

52. It was argued that Block 4/295 was valued at about Kshs. 100,000,000 per acre and the entire parcel of land measuring 5.8 acres was valued at Kshs. 423,512,500 which the claimant undervalued and sold at a paltry sum of Kshs 110,000,000.

53. The Respondent herein maintained that the auctioneers were not given instruction by the claimant neither did they obtain warrant of sale from this Court as provided for under Rule 11(1)(b) of the Auctioneers Rules 1997.

54. It was further submitted that the auctioneers violated Rule 15(b) of the Auctioneer Rules and Order 22 Rule 57 of the Civil Procedure Rules by failing to prepare and serve notification of sale giving the respondent 45 days redemption notice, but instead that the auctioneers issued a letter giving them only 15 days to redeem the said property. This letter was not even served on them.

55. It is the Respondent submissions that the advertisement of sale in the newspaper was misleading in that it gave a general place being "Kericho Town Opposite Kericho law court" but did not indicate the building in which the said auction would take place therefore

misleading interested bidders.

56. It was further argued that there are two contradicting list of bidders attached by the auctioneers as HGO-29, with one list shows 9 bidders and the other showing 4 bidders and the name of one Geoffrey Otieno appears in both lists, however that in the first list the said bidder allegedly made a bid of Kshs 105,000,000 and in the second one the same bidder made a bid of Kshs. 85,000,000, therefore raising question as to who attended the auction and their bids respectively.

57. The respondent also submitted that there was violation of Order 22 Rule 69(1) which provides that a deposit of 25% shall be paid at the fall of the hammer however that the Auctioneer attached a receipt showing receipt of the said 25% on 7.2.2019 about 15 days after the auction sale.

58. The Respondent herein also took issue with the memorandum of sale produced and submitted that the same was forged and issued on 24.1.2019 before the auctioneer received the 25% from the purchasers. Further that the balance of the purchase price was never paid within 90 days.

59. The respondent then submitted that the Auctioneer together with the claimant have failed to account for the said proceeds of sale. Also that the entire sale of Block 4/295 was done in an opaque manner and non-staff members benefited instead of the employees. On the above reasons the respondent urged this court to invalidate the sale and cited the case of **Kwanza Estate V Dubai Bank Limited [2014] eKLR**.

60. With regard to revocation of the auctioneer's license, it was argued that Section 28 of the Auctioneers Act empowers the Court to revoke or suspend an auctioneers license. It was submitted that auctioneer are officers of the Court as stated in section 23 of the Auctioneers Act therefore are subject to the jurisdiction of the Court. The respondent supported its argument by citing the case of **Labhsons Ltd V Monura Hauliers Ltd [2004] eKLR**.

61. On whether the Court should exercise disciplinary control over Gilbert Kemboi Advocate, it was argued that this Court has complimentary disciplinary powers to punish advocates alongside the Advocates Tribunal as stipulated under section 56 of the Advocates Act. In this they cited the supreme Court decision in **Republic V Ahmad Abolfathi Mohammed & Another [2019] eKLR** and the Court of Appeal Decision in **Kenya Commercial Bank Vs Adala [1979] eKLR**.

62. The Respondent herein then urged this Court to allow the Application dated 26.4.2021 with costs to them.

63. With regard to the application by Kemboi Chambers Advocates, the Respondent herein identified the issues for determination as follows; whether the chamber summons dated 14.7.2021 is merited and who should bear costs of the said application.

64. On the first issue it was submitted that the Kemboi Chambers Advocates are not true interpleader as alleged for the reason that there is no adverse or competing interest to the sums of monies the advocate is holding instead that the advocate had without justification identified sums allegedly owed to Ndege Chai Sacco Limited, KRA, and Migiro Advocates which parties have not adversely claimed the said monies. It was argued that the said advocate did not interplead against the three parties as respondents to enable them file their responses to the said interpleader as such the advocate being an advocate of the claimant is an agent of the claimant and therefore is deprived of the independence to interplead against his own clients. Also that the advocate has failed to account for the proceeds of sale disqualifying him as an interpleader.

65. It was submitted that the application by Kemboi Advocate is premature and speculative for the reason that the advocate is seeking directions to release Kshs. 3,800,000 allegedly owed to Migiro Advocates on alleged bill of cost which has not been taxed or a certificate issued thereof. The consent alleged entered on 3.5.2021 is in question as evidence by the 1st Respondent's Replying Affidavit sworn by Musa Koeh.

66. It is the Respondent submissions that the application by Kemboi Chamber Advocates was in reaction to their application of 26.4.2021 and a decoy to avoid accounting for the proceeds of sale in LR KERICHO MUNICIPALITY BLOCK 4/295 which was undervalued and sold unprocedurally. The Respondent urged this Court to disallow the application as to allow it would be in perpetuation of an illegality. In this they cited the case of **Kwanza Estate V Dubai Bank Limited [2014] eKLR**.

67. The Respondent herein argued that the transaction in the sale of their property ought to be rendered void abinitio as a result of fraud perpetuated by the claimant in cahoots with their advocates and auctioneers. In this they cited the case of they cited the case of **Kwanza Estate V Dubai Bank Limited (Supra)**

68. The Respondent then urged this Court to dismiss the Application herein with costs to them.

Claimants' submissions

69. The claimant submitted from the onset that this Court lacks jurisdiction to determine the issue herein as the matter for determination arise out of title to and occupation to land being L.R No. KERICHO MUNICIPALITY BLOCK 4/295. It was argued that without jurisdiction this Court ought to down its tools as was held in the celebrated case of **Owners of Motor vessel "Lillian S" Vs Caltex oil K Limited [1989] KLR 1**. It was further argued that the Environment and Land Court was better placed to deal with the issues raised in the application therein.

70. The claimant submitted also that the issues for determination in the application dated 26.4.2021 have earlier been determined in the Court of Appeal at Nairobi under Civil Application number 38 of 2020 as consolidated with Civil Application number 52 of 2020. Therefore, that to determine the issues raised herein will offend section 7 of the Civil Procedure Act as the issue are res judicata. It was also argued that even if the issue were not fully determined but ought to have been raised in those earlier application and that the only option that was left for the

applicant to explore was to seek for review of the orders or appeal the same and not file another application. In this Counsel cited the case of **Uhuru Highway Development Limited V Central Bank of Lenya & 2 other [1996] eKlr**. And the case of **Gurbacham V Yowani Ekori[1958] EA 450**.

71. The claimant further submitted that the dispute raised by the applicant in their application is without basis since the terminal dues were calculated and agreed upon by the applicants and a consent was recorded in Court on 25.7.2016. that it was due to the applicant adamancy in paying the consented sum of money that informed the decision by the claimant to commence execution proceedings. It was then argued that the execution proceedings especially the procedure in which LR NO Kericho Municipality Block 4/295 was sold had raised questions and the applicant filed applications dated 9.3.2019 and 16.3.2019, however the Court (Justice Mbaru) lauded the process as being above board.

72. On whether the procedure in which the claimant through its auctioneers, Hegeons Auctioneers conducted the action was proper, the claimant submitted that the procedure was clearly demonstrated by the Auctioneers in their replying affidavit dated 11.8.2021. the process according to the claimant followed the procedure provided by law to the letter.

73. On whether the firm of Kemboi Chambers Advocates acted in unprofessional manner in the way it handled the issue in this matter, it was argued that the firm of Kemboi Chambers Advocates came on record after the matter had been concluded and at execution stage, and the advocate was only task to defend the many applications that were raised when execution commence and to protect the interest of the claimant in the process.

74. It was further argued that the allegation of fraud by the said firm was never particularized as envisaged under Order 2 Rule 4(1) of the Civil Procedure Rules, neither did were they or proved by the applicant when they are the ones tasked under the law. In this the claimant cited the case of **Vijay Morjaria Vs Madhusingh Darbar & Another [2000] Eklr** and the case of **Kinyanjui Kamau V George Kamau [2015] eKlr**.

75. It was submitted that the valuation of the land was initially conducted by the Applicants through their valuers Primeland valuer who valued the land at Kshs. 30 Million, however that another valuation was done by the Government valuer who marked the land at Kshs 117 Million. In both valuations the form of Kemboi Chambers Advocates was not involved in.

76. It was also argued that the applicant has challenged the fact that the purchasers took more than 90 days to release the balance of the purchase prices. That the delay in release of the monies was informed by the applicant application filed on 3rd April, 2019 which challenged the sale of the said land and the withholding of the balance was the purchase exercising caution awaiting the outcome of the application.

77. It was the claimant's submissions that due procedure was followed and the execution completed. The claimant has also received all the monies proceeds of the auction and distributed to the Applicants employees as agreed. It was argued that to retrieve the said monies from the applicant's former employer would be an act in vain and to allow the orders sought would be unenforceable. It then argued that Court do not make Order in vain and cited the case of **B V Attorney General [2004] I KLR 431**.

78. The Claimant in conclusion submitted that the application is not merited and the same ought to be dismissed with costs.

Hegeons Auctioneers Submissions.

79. The auctioneers herein filed joined submission in opposition of the application dated 26.4.2021 and in support of application dated 14.7.2021 and narrowed its issue to three; whether there was fraud in the sale of LR NO Kericho Municipality Block 4/295, whether the said sell should be set aside and whether the license of Hegeons Auctioneers should be cancelled.

80. On the first issue it was submitted that the applicant who alleged fraud in the sale of the said parcel of land ought to have pleaded with particularity the fraud alleged and prove it by adducing evidence. In this it cited the case of **Vijay Morjaria Vs Madhusingh Darbr & Another(Supra)**. It was argued that the allegation that there was no decree capable of being executed is without basis since the Applicant and the claimant negotiated the matter and compromised it then recorded a consent on settlement. Subsequently, the parties negotiated dues to the applicant employee and the figure of Kshs 51, 463,694.30 emanated from the Applicant and directed to the auctioneers and attached were the names of employees, amount owing and account numbers to deposit the said money. Secondly that the allegation that the auctioneer lacked instruction is unjustified since the auctioneers were instructed by the claimants and not the applicant and the letter of instruction is attached to the repaying affidavit. The procedure of sale was also clearly illustrated by the auctioneers.

81. The auctioneer argued that the allegation that it in cahoots with the claimant failed to account to the applicant is untrue as the claimant has on several occasions tried to remit the residue of the sale to the Applicant however the two faction of the applicant being Sololo Holding and Yas Angwan frustrated the process as none of the parties have agreed on the account to deposit the residue of the sale and their internal wrangles have therefore delayed the remittance of the said money.

82. On the second issue, it was argued that the proceedings were conducted by all parties herein who participated in the negotiation and entered into consent that led to execution proceedings which were sanctioned by this Court in presence of all parties and therefore its impractical to now, after the land has been sold and money paid to the employees, to want to cancel a sale when the applicant had opportunity to stop any action when the matter initially started. It is the Auctioneers submissions that the prayer for cancellation of sale has been overtaken by events.

83. On whether this Court can cancel the license of the auctioneer, it was submitted firstly that the applicant have not demonstrated any wrongdoing on the part of the auctioneers and if there was any the applicant ought to have lodged a complaint with the Auctioneers Board and not this Court.

Purchasers Submissions.

84. The Purchasers submitted on all four Applications.

85. With regards to the application of 26.4.2021, it was submitted that the applicant had tried vide applications dated 14.6.2018 to stop the auction sale and the application dated 9.3.2019 to stay consent order which were all dismissed by the Court. Later in December vide application dated 16.12.2019 the applicant sought similar orders as the application earlier dismissed of 9.3.2019 which was equally dismissed, aggrieved by the decision of the Court the Applicant lodged an appeal vide Civil application no. 38 of 2020 and 52 of 2020 seeking to injunct any action and or dealing in LR NO. KERICHO MUNICIPALITY BLOCK/4/295 which was dismissed by the court of Appeal leading to the filling of the application of 26.4.2021 which according to the purchasers is res judicata as the issues have been substantially determined in the previous applications. In this the purchasers cited the case of **Erick Wambua Muli & Another V Prime Bank Ltd & 3 others [2017] eKLR**.

86. The jurisdiction of this Court to grant the prayers in (b)-(d) in the application particularly the cancellation of the entries on the parcel of land is questioned by the purchasers who submitted that the prayers therein can only be granted by the Environment and Land Court. It was argued that this court lack jurisdiction to determine the issue and grant the prayers therein therefore that the Court ought to down its tools. In this they cited the case of Kisumu ELC Petition Number 6 of 202, Crossley Holdings Ltd V Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries & 5 others; where the Applicant had sought to cancel the Petitioner Title and the Court (Chemitei J) declined for want of jurisdiction and the matter taken to Court of Appeal in Kisumu who upheld the decision of the trial Court.

87. The purchasers also submitted that they are innocent purchasers for value without notice having purchased the property in a public auction and now paid the entire purchase price. They therefore urged this Court to protect their interest and refrain from cancelling the sale arguing that they would not be sufficiently compensated by way of damages and in any event the monies have already been transferred and in hands of third parties who are not likely to refund the said money. In this they cited the case of **David Katan Ngomba V Shafi Grewal Kaka [2014] eKLR and the case of Joyce Wairimu Karanja V Kames Mburu Ngure & 3 others [2018] eKLR**.

88. It was further argued that the applicant lost their right of redemption under section 72 of RLA when the property was auctioned and transferred to third parties. In this they cited the case of **Joyce Wairimu Karanja V Kames Mburu Ngure & 3 others (Supra)**.

89. The Purchasers then submitted that the applicant have not met the conditions pre-requisite of grant of an injunction as stated in **Giella V Cassman Brown** therefore that their application ought to be dismissed.

90. With regard to Application dated 14.7.2021 by Kemboi Chambers Advocates, the purchasers are in support of the application save for the fact that the purchasers are of the opinion that the claims by Ndege Chai Sacco Limited, Migiro and co advocates and Kenya Revenue Authority can be pursued in other forums and not in these proceedings as to allow all these claim will clog up the issue and delay the matter further.

91. On the Application dated 21.7.2021 and Application dated 20.9.2021 both seeking for Migiro and co advocates and Ndege Chai Sacco Limited to be enjoined are opposed for the reason that the parties herein are not beneficially for the just and expedient determination of the case herein since they do not add any probative value to the proceedings. Further that the parties herein are seeking to be enjoined after judgment when they have relied on Order 1 Rule 10 which envisioned joinder when there are live proceedings before judgment, therefore that their application are defective. In this they cited the case of **Stanley Ngethe Kinyanjui V Tony Ketter & 5 other [2015] eKLR**.

Kemboi Chambers Advocates Submissions.

92. The advocate herein only filed submissions in support of its application dated 14.7.2021.

93. The firm of advocates herein submitted that their application is an interpleader within the meaning given to it by section 58 of the Civil Procedure Act as read with Order 34 rule 2(a-c). it was then argued that the elements of an interpleader are that;

- a. That there are two or more individuals who are adversely claiming a property movable or immovable.
- b. The property is in possession of a third party who has no interest or claim over the property except for charged or costs.
- c. That the third party is not in collusion with any the claimants.
- d. That the applicant is willing to pay or transfer the subject matter into court or to dispose of it as the court may direct.
- e. That the applicant is in actual possession of the property, being claimed by the claimants and
- f. That there is no suit pending in which the rights of all parties can be properly decided.

94. The Advocate herein then buttressed its argument by citing the case of **Safina Properties Limited & Another V Barclays Bank of Kenya Limited & 7 Another [2015] eKLR**.

95. It was then submitted that the Advocates application is an interpleader because the advocate is in possession of the residue purchase price of Kshs. 17,477,661.08 having fully satisfied the decree of the Court and deducted his costs and other charges used in selling the property. It was argued that the applicant is in a dilemma as to who between Sololo Holdings and Yas Angwan Holdings should be given the said monies therefore necessitating the filling of the interpleader Application of 14.7.2021 which he urged this Court to allow as prayed.

96. I have examined the averments of the parties in all these applications and submissions filed herein.

97. I would first dispose of the application dated 21/7/21 by Migiro & Co. Advocates seeking to be enjoined in these proceedings in order to protect their interest.

98. The gist of their application is that they were instructed by the applicants to defend them and the matter was concluded by consent entered on 26/7/2016. They contend that their legal fees was not paid and they filed Misc. Application No. 14 of 2021 and a bill of costs dated 26/3/21.

99. Their claim is against the applicant herein. My position is that this application is entirely against one party and would not add any value to the issues pending before court. The applicant had chosen to pursue his interest vide Misc. App No. 14 of 2021 which in my view is the right forum.

100. The applicants enjoinder in this claim would not add any value to this claim. I find the application has no merit. I therefore dismiss it accordingly.

101. And now to the application dated 20/9/2021 filed by Ndege Chai SACCO Ltd seeking also to be enjoined in these proceedings.

102. The applicant avers that they ought to be enjoined in these proceedings as interested parties. The applicant herein avers that he has an interest in these proceedings in that they entered an agreement with employees of the 3rd respondent (Tea Hotel Ltd) to advance them loans and it was part of the agreement that the 1st respondent would deduct from the salaries of the said employees who had borrowed the money and remit to them monthly.

103. That despite deducting the said money from the employees, the same was not remitted to them as agreed. Again as it is in the above application the issue here is between this SACCO and members of the SACCO who are not parties of the suit. Enjoining the applicant herein to this suit will not add any value to this case.

104. I therefore find the application unmerited and I dismiss it accordingly.

105. As concerns the application dated 14th July, 2021 the firm of Keiboi & Co. Advocates filed chamber summons pursuant to order 34(1) & (2) of the CPR 2020 seeking variation orders to the benefit of Ndege chai Savings Credit Corporative Society, Kenya Revenue Authority and Yas Angwan Holdings Ltd. He seeks orders to compel the respondents to appear and state their claim in respect of the subject.

106. In respect of this application as submitted by the purchasers the issue of payment of PAYE to KRA and payment of funds to a Co-operative SACCO owed by a remitter is a matter to be handled by the Tax Tribunal and the Co-operative Tribunal. This court has no jurisdiction to handle the issue of remittances of PAYE and SACCO deductions.

107. I therefore find the application unmerited and therefore reject it accordingly.

108. The last application is one dated 26th April, 2021. In opposing the application the respondents aver that the application is res judicata.

109. This claim was filed on 29/1/2016 by the claimants. The claim was for 5,836,093/= being salary arrears of permanent employees 4,662,314/= and for casuals terminal dues being 230,520/=.

110. In the response to the claim, the respondents conceded that they could meet and discuss the issues with the claimant.

111. On 26/7/2016 a consent filed by parties dated 25/7/2016 was adopted as an order of the court whereby the parties agreed as follows;

“BY CONSENT of the parties herein the monies owed to the claimant membership shall be paid as follows;

1. Kshs.6,000,000/= which has already been paid towards salary arrears.

2. Kshs.2,856,028/= being terminal dues to be paid to the retirees at kshs.155,000/= per month with effect from end of August 2016.

3. The respondent have undertaken to pay the monthly salaries to the claimant membership when deemed due.”

112. It appears that the respondents didn't adhere to court order as per (2) & (3) above and so the arrears kept going up and on 30/5/2018, this court gave orders allowing execution of the moneys. The execution was referred to the Deputy Registrar.

113. On 4/6/2018, the claimant applied to execute the court Judgment. The amount owing was 33,142,600/=. The execution was allowed to proceed.

114. The claimant sought to execute by sale of the respondent's immovable property being Kericho Municipality Block 4/313. The execution was to be through Hegeons Auctioneers and the amount executable was 33,142,600/=. The notification was apparently served upon Nancy Kosgei on 5/6/2018.

115. The applicants, respondents herein have argued that this sale was invalid and should be set aside. They argue that there was no decree capable of execution, no letter of instruction to auctioneer, no notification of sale, no certificate of service, misleading newspaper advert in size of block 4/295; contradicting list of bidders, no payment of 25% of purchase price, etc.

116. As to whether the sale was valid or not this court makes reference to Order 22 Rule 57 which states as follows;

“Notification of sale by public auction

[Order 22, rule 57.]

(1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause public notice and advertisement of the intended sale to be given in such manner as the court may direct.

(2) Such public notice shall be drawn up after notice to the decree-holder and the judgment-debtor, and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold;

(b) any encumbrance to which the property is liable;

(c) the amount for the recovery of which the sale is ordered; and

(d) every other thing which the court considers material for a purchaser to know in order to judge the nature and value of the property;

Provided that notice to the judgment-debtor may be dispensed with, or substituted service thereof ordered, for reasons to be recorded by the court.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed in the manner hereinbefore prescribed for the signing of pleadings and containing, so far as they are known to or can be ascertained by the person so signing, the matters required by subrule (2) to be specified in the public notice.

(4) For the purpose of ascertaining the matters to be specified in the public notice, the court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

(5) Directions shall be given as to the mode and expense of advertising the sale, which expense shall be costs of the sale.

(6) The advertisement shall be in Form No. 15 of Appendix A.”

117. There was no indication that directions were given by court on the mode of sale as per Order 57 Rule (5) above. An advert was placed in the newspaper for sale by Hegeons Auctioneers. The land to be sold was Block 4/295 measuring 2.366ha. The sale was to be conducted on Tuesday 29th January, 2019 at 11am at Mocos Yard Kisii Town.

118. As per Order 22 Rule 57(6) the advert to be placed for sale is as indicated. Form No.15 details what should be in the advert. It is evident that what the auctioneer placed out as an advert deviates from what is expected as per Order 22 Rule 57 (6) (Form No. 15).

119. Other than the complaint the auctioneer sold a different block as opposed to what was expected, is also evident that the applicant applied to sell Kericho Municipality Block 4/313 which was allowed by court. The auctioneers advertised to sell Block 4/295 which was a different parcel of land altogether.

120. It is therefore apparent that the sale was fraudulently done and against the provisions of Order 22 Rule 57(6).

121. There was an application by the respondent to stay the sale dated 14/6/2018. The court rejected the application vide its Ruling dated 9/10/2018.

122. On 3/4/2020 J. Mbaru delivered a ruling in respect of an application dated 16/12/2019 where the applicants sought stay orders to stay execution of orders of warrants of attachment and sale of Kericho Block 4/295. J. Mbaru found the application without merit and dismissed it. Aggrieved by this ruling, the applicants appealed to the Court of Appeal which court delivered a ruling on 29/1/2021 indicating the application of 11/5/2020 seeking to set aside order of J. Mbaru dated 3/4/2020 were struck out.

123. As it is the application handled by J. Mbaru and the Court of Appeal related to staying execution which application was struck out and this means the applicant still had room to file a proper application.

124. In the understanding of this court, the application handled by J. Mbaru and Court of Appeal related to stay and not as the current

application relating to cancelling of entries in the register. It is therefore my finding that this application is not res judicata.

125. As analysed above the sale was done without due process and against the order 22 Rule 57(6).

126. In the circumstances and considering the orders sought I issue orders as follows;

a. An order of mandatory injunction is issued compelling the Chief Land Registrar, Kericho to cancel the illegal entries on L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres.

b. The Honourable court issues orders setting aside the purported sale and eventual transfer of L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 to Ravji Devji Chhabhadia, Kanji Devji Chhabhadia and Shashikant Kanjibhai Pindoriya respectively, the above purported Purchasers;

c. The Honourable court is hereby pleased to issue a mandatory injunction compelling the Respondents to file before this court the true and just accounts including, but not limited to the exact amount of money paid by Ravji Devji Chhabhadia, Kanji Devji Chhabhadia and Shashikant Kanjibhai Pindoriya to date and the amount paid to each of the employees herein pertaining to the alleged sale of L.R. No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres.

d. The Honourable court is hereby pleased to issue a mandatory injunction compelling Hezron Getuoma Onsongo T/A Hegeons Auctioneers to file before this court the details pertaining the public auction, including but not limited to date, time and place of the alleged auction, the records of the auction, bidders and the respective bids pertaining to the alleged sale of L.R.No. KERICHO MUNICIPALITY BLOCK 4/295 measuring 5.831 acres.

e. The claimant is free to institute proper execution proceedings devoid of fraud after the accounts are rendered by the auctioneer.

f. The costs of this application be borne by the claimants.

RULING DELIVERED VIRTUALLY THIS 18TH DAY OF JANUARY, 2022

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Kemboi for claimant - present

Langat for Hegeon Auctioneer – present

Menezes for purchasers – present

Migoro – absent

Court Assistant - Fred