



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

APPEAL NO. 34 OF 2019

(Formerly High Court Civil Appeal No. 508 of 2019)

AGRICULTURAL SOCIETY OF KENYA.....APPELLANT

VERSUS

BENJAMIN K. KWAMBAL.....1ST RESPONDENT

FAITH MUTHEE t/a COMPLIANCE AUCTIONEERS.....2ND RESPONDENT

RULING

1. The application before me is the notice of motion of 23rd June 2021 by the Appellant/Applicant. The Appellant sought the following orders:-

1) *Spent*

2) This Honourable Court be pleased to issue orders suspending the assessment of the Auctioneer's fees as submitted in his Bill of Costs dated 23rd October 2020 as filed in NBI HC COMM NO. 1164 of 2019; Faith Muthee T/A Compliance Auctioneers vs. The Agricultural Society of Kenya pending the hearing and final determination of this application.

3) This Honorable Court be pleased to issue orders striking out the Bill of Costs dated 23rd October 2020, for being unprocedural and unlawful.

4) Costs of this application be provided for.

2. The application is premised on the grounds that there exists stay orders pending the determination of this Appeal issued on various dates being 4th December 2019, 26th November 2019 and 25th September 2021, all which were duly served upon the 2nd Respondent and that the Appellant has already deposited security pending the determination of this Appeal and only awaits certified typed proceedings from this court in order to prosecute the Appeal. The Appellant asserts that the Auctioneer, despite being familiar and even a party to this appeal, has gone ahead and purported to file an Auctioneers Bill of Cost in NBI HC COMM NO. 1164 of 2019, Faith Muthee T/A Compliance Auctioneers vs. The Agricultural Society of Kenya and that by filing and proceeding to tax the Auctioneer's Bill, the Auctioneer unlawfully and unprocedurally declares the Appellant herein, a debtor, when the matter is still under determination. The Appellant asserts that the Auctioneers acts are not only a complete violation of the stay orders of this court issued 4th December 2021, but also invites the court to act in vain, as the Deputy Registrar has no jurisdiction to determine the Auctioneers Bill, where stay orders have been issued.

3. The Respondent and the Auctioneer are opposed and filed grounds which assert as follows:

i. THAT the application dated 4th June 2021 seeks to challenge the decision of the Deputy Registrar issued on 21st May 2021 which decision can only be challenged by way of reference to a Judge of the High Court within 7 days from the date of the decision as provided by Rule 55(5) of the Auctioneers Rules hence the belated challenge is not only out of time but in the wrong forum.

ii. THAT Rule 55 of the Auctioneers Rule does not vest upon this Court jurisdiction to suspend, stay or strike out a bill of costs more so once the same has been taxed, a decision issued and the same intentionally withheld from the Court.

iii. THAT there is no law on joinder of Auctioneers to appeals that they were not parties to on grounds of their instructions to execute and the mere naming of the auctioneer as the 2nd Respondent does not make them a party to the dispute determined by Hon.

Gesora on 30th July 2019 and there can be no joinder after judgement more so on appeals.

- iv. THAT an Auctioneer is paid for work done and the stay Order issued in this matter does not bar the Auctioneer from taxing her Bill for work done prior to the Order.
- v. THAT Rule 55(2) of the Auctioneer's Act vests jurisdiction to tax Auctioneers Bill to a Registrar of the High Court hence the Registrar had jurisdiction to tax the Auctioneers Bill.
- vi. THAT the applicant's application is unheard of and not provided for by any law and should be struck out with costs to the Auctioneer.

4. The application before me is the notice of motion of 23rd June 2021 by the Appellant/Applicant. The motion seeks to challenge the decision of the Deputy Registrar made on 21st May 2021. The decision of the Deputy Registrar is to be challenged by way of a reference. It is conceded that the Applicant herein did not challenge the decision by a reference within the 7 days prescribed by Rule 55(5) of the Auctioneers Rules. The Auctioneer is the cause for the failure as she proceeded to file the bill and the matter was handled before a court devoid of jurisdiction as this file was sent to this Court on 24th September 2019 by Mbogholi Msagha J. (as he then was). Needless to say, this order by the learned Judge was never challenged nor made subject of a review – it stands unimpeached. It therefore means that any proceedings before the High Court after the date of transfer are a nullity being so invalid *ab initio*. The Auctioneer has cunningly attempted to blindsides justice and instead of filing its bill here where there is an able Deputy Registrar proceeded to file the taxation of the auctioneers bill in a High Court division, where the facts of the case are not apparent. The inevitable result is that the bill of costs before the High Court is struck out as it has no place in a matter involving the Appellant and the 1st Respondent either in the High Court or before the Deputy Registrar of that Court. The Respondents herein are to meet the costs of the motion herein as there was no basis to file a bill at the High Court contrary to the law in an attempt to circumvent orders of this Court.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2021

NZIOKI WA MAKAU

JUDGE