



REPUBLIC OF KENYA



**Kinuthia t/a Immediate Auctioneers v Murila (Civil Appeal E1470 of 2023)
[2025] KEHC 4143 (KLR) (Civ) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4143 (KLR)

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

CIVIL

CIVIL APPEAL E1470 OF 2023

LP KASSAN, J

MARCH 26, 2025

BETWEEN

**GEORGE MBAGU KINUTHIA T/A IMMEDIATE
AUCTIONEERS APPELLANT**

AND

ANDREW TEDDY MURILA RESPONDENT

*(Being an appeal from the decision of the Auctioneers Licensing
Board delivered on 20.11.2023 in Disciplinary Cause No. 45 of 2022)*

JUDGMENT

1. The Respondent as Complainant brought a complaint under section 24 of the Auctioneer's Act 1996 in the disciplinary cause no. 45 of 2022 against the Appellant (T/A Immediate Auctioneer). The Appellant, as a sitting board member representing the Auctioneering fraternity, given the unique situation, a special four-member committee was appointed. The gist of the complaint was against the attachment and sale of motor vehicle registration number KAV 468S make Isuzu Pick-up belonging to the Respondent by the Appellant. The attachment and sale were pursuant to an execution of instructions to distraint for rent.
2. The Board made the following findings:
 - a. The instructions issued to the Respondent (Appellant) herein were for the levy of distress for rent against a named tenant-Teresiah Kabuiya Nduta as demonstrated by a copy of tenancy agreement annexed to the Respondent's affidavit in response and the letter of instruction.
 - b. Neither the complainant (Respondent) nor Ng'amu Limited where he was Director had any discernible connection with the indicated tenancy or rented premises.



- c. The Complainant has demonstrated and it is not contested by the Respondent that the subject vehicle was owned by and registered under the names of Ng'amu Limited-a Limited Liability Company.
 - d. The Respondent inter alia applied for vesting order in the course of sale of the vehicle and knew or had the opportunity to know this fact prior to completion of the sale.
 - e. The Respondent as an auctioneer had the legal obligation and duty to exercise due diligence prior to proceeding with the attachment and for sale of the subject vehicle.
 - f. The claim by the Respondent that the tenant surrendered the keys to the subject motor vehicle or that it was proclaimed in the tenancy premises is not adequate and did not displace the auctioneer's obligation to due diligence.
 - g. The relationship is any between the tenant and the son to the complainant is immaterial in the circumstances.
 - h. To the extent that the complainant or his son were not the lawful tenants of the leased property, namely LR No. 28736-Bahati Ridge, Thika or House No. 38, nothing they did, including the issuance of the undated cheque, could validate the attachment of the subject vehicle which was not the property of the tenant.
 - i. The attachment advertisement and sale of motor vehicle KAS 468S owned by Ng'amu Limited for recovery of rent arrears due from Ms. Teresiah Kabuiya who was not the owner of the vehicle was illegal and undertaken in breach of the Respondent's duty to exercise due diligence in the course of his work.
3. The Board's recommendation for punishment was
- a. That the Respondent be condemned to pay a fine Kshs 50,000/= within 45 days of this decision
 - b. That the Respondent be condemned to pay compensation to the complainant under section 24 in the sum of Kshs 100,000/= within 45 days of this decision.
 - c. That the Respondent be condemned to pay costs in the sum of Kshs 20,000/= to the complainant within 45 days of this decision.
 - d. That in default of any of the above the Respondent's license to stand suspended from the date of default, the Respondent be required to deposit his license with the Board within 7 days of the date of default and further be barred from participation in any Board business until compliance.
4. It is the aforesaid decision that has precipitated this appeal. The grounds of appeal are set out in the memorandum of appeal dated 21.12.2023. In summary, the grounds are that
- i. The Tribunal erred in law and fact by finding that the complainant before the Board has merit despite the evidence presented before the Board to the contrary.
 - ii. Tribunal erred in law and fact by failing to consider the defence and reply mounted by the Appellant on the complainant by the Respondent and in so doing misdirected
 - iii. The Tribunal erred in law and fact by failing to make a finding that the Respondent voluntarily surrendered the motor vehicle KAV 468S to the Appellant despite overwhelming evidence on the same.



- iv. The Tribunal erred in law and fact by imposing the duty of establishing the ownership of the motor vehicle KAV 468S on the Appellant despite evidence produced confirming that the Respondent voluntarily surrendered the motor vehicle voluntarily for attachment due to rent arrears.
 - v. The Tribunal erred in law and in fact by basing their decision on principles not supported by law and in so doing reached an erroneous verdict.
 - vi. The Tribunal erred in law and fact by imposing a fine of Kshs 50,000/= costs of Kshs 20,000/= and Kshs 100,000/= damages without any justification and against the weight of evidence.
 - vii. The Tribunal erred by finding that the Respondent had proved a case of misconduct against the Appellant against the weight of evidence adduced by the Appellant.
 - viii. The Tribunal erred in law and fact by misconstruing the Auctioneer Act and its application on the complaint and in so doing arrived at an erroneous decision against the weight of evidence by the Appellant on the complaint.
 - ix. The Tribunal erred in law and fact by failing to consider the facts raised in the Replying Affidavit and submissions by the Appellant and in so doing entered an erroneous verdict.
5. The sum of the Appellants' submissions was that the Appellant challenged the decision of the Auctioneers Licensing Board which found against the Appellant in a complaint filed by the Respondent. Furthermore, the Appellant submits that the Tribunal's proceedings were procedurally unfair, violating Article 47 of *the Constitution*. They claim the Tribunal failed to give adequate notice of the allegations and an opportunity to fully respond, thus breaching the Appellant's right to a fair hearing. The submissions also challenge the evidentiary basis of the Tribunal's findings, stating that no credible or sufficient evidence was presented to warrant the decision arrived by the tribunal. The Appellant therefore prays for the decision of the Tribunal to be set aside with costs awarded in their favor.
 6. The Respondent didn't submit.
 7. The issues raised in this appeal are:
 - i. Whether the trial magistrate's finding the Appellants had no locus standi was erroneous?
 - ii. Whether the Appellants were entitled to an award under the *Law Reform Act* and an award for special damages?
 - iii. Who is to bear the costs?
 8. The court has considered the rival submissions and the record of the court below. In *Selle v Associated Motor Boat Co.* [1968] EA 123 the Court of Appeal for East Africa laid down the principles guiding the exercise of the jurisdiction of the first appellate court. The court stated:

“An appeal to this Court from the trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial Judges findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities or materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the



evidence in the case generally (Abdul Hamid Saif v. Ali Mohamed Sholan[1955] 22 EACA 270).”

See also Peters v Sunday Post Limited (1958) EA 424; Williams Diamonds Limited v Brown (1970) EA. 1.

9. The Court of Appeal in Ephantus Mwangi and Another v Duncan Mwangi Wambugu (1982) – 88) IKAR 278 stated that:

“A court of Appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have altered on wrong principles in reaching the findings he did”

10. This case revolves around the attachment and sale of motor vehicle registration number KAV 468S make ISUZU TFR 54 Pick Up (hereinafter referred to as the subject vehicle). It is not disputed that the said vehicle was proclaimed and attached through a proclamation notice dated 28.04.2021. It was followed by a notification of sale of movable property 11.06.2021. The sale was through public auction and was advertised in the Star newspaper dated 13.07.2021.
11. The Respondent through their Advocate Njoroge-Kugwa & Company Advocates in a letter dated 10.09.2021 to the Appellant notified him that the subject vehicle’s attachment was illegal and that the same should be released to the Respondent.
12. The Appellant responded with a letter dated 13.09.2021 informing the Respondent the subject vehicle had been sold by public auction. The Appellant applied for vesting orders for the transfer to the new owner and the same was granted on 09.06.2022.
13. The instructions given to the Appellant was to distress for rent against the tenant of LR No. 36 Bahati Ridge-Thika occupied by Teresia Kabuiya Nduta. The subject vehicle was found at the tenancy property and was attached by the Appellant. The same is registered under the name of Ngamu Limited, a company where the Respondent is a director. At the time of attaching the said subject vehicle, the Appellant may not have known the ownership of the same. Before putting it for sale, the Appellant ought to have conducted a search which would have shown the ownership position. A further search of the CR12 would have shown who the directors of the company were and whether there was any tie to the tenant the subject of his instructions.
14. Under section 23 (b) of the Auctioneer’s Act, the duties of the auctioneers are provided as:
- “Act in accordance with such rules as may be prescribed when repossessing, attaching, storing or selling any property pursuant to the provision of any written law or contract”
15. The subject motor vehicle registered under Ngamu Limited could not lawfully be distrained for rent as the tenant was not the owner of the same. Any purported sale of the same was a violation of the law. The Appellant contends that the vehicle was voluntarily surrendered and found within the tenant’s premises and thus rightly attached. However, the record clearly shows that the motor vehicle was registered under Ng’amu Limited, a company in which the Respondent is a director. The tenancy agreement was between the landlord and a third party, one Teresia Kabuiya Nduta, who had no legal or beneficial interest in the said vehicle.
16. The Auctioneer’s duty under Section 23(b) of the Auctioneer’s Act is explicit in requiring due diligence when attaching property. The Appellant had the opportunity and obligation to carry out a search to confirm ownership before advertising and selling the vehicle. This was not done. Instead,



the Appellant proceeded to apply for vesting orders post-sale, even after receiving notice from the Respondent's advocates that the attachment was illegal.

17. The Board was therefore justified in concluding that the Appellant failed in his duty to exercise due diligence.
18. The Appellant challenged the findings of the Board, arguing that the Respondent had no locus and that the Board failed to consider his submissions. However, it is evident that the Respondent, acting on behalf of Ng'amu Limited, did have standing to challenge the illegal attachment of the company's property. The Board considered the evidence, including registration documents, the proclamation notice, and the timeline of events. The findings were supported by the record and the law.
19. Contrary to the Appellant's assertion, the Board properly analyzed the circumstances and rightly found that the Respondent's complaint had merit.
20. The Appellant takes issue with the Board's imposition of a fine of Kshs. 50,000/=, compensation of Kshs. 100,000/=, and costs of Kshs. 20,000/=. However, these awards are within the discretion of the Board under Section 24 of the *Auctioneers Act*, which empowers the Board to issue orders it deems just and necessary, including fines and compensation for loss arising from an auctioneer's misconduct. Given the illegality of the attachment and sale, and the lack of any restitution to the lawful owner, these penalties were neither excessive nor punitive but served to enforce professional standards.
21. In view of the foregoing analysis, the appeal by George Mbagu Kinuthia t/a Immediate Auctioneers lacks merit. The findings and decision of the Auctioneers Licensing Board delivered on 20.11.2023 in Disciplinary Cause No. 45 of 2022 are upheld in their entirety.
22. In civil litigation, costs follow the event unless the court directs otherwise. As the appeal lacks merit and the Appellant has not demonstrated any miscarriage of justice or procedural irregularity before the Board, the Respondent is entitled to costs both in the appeal and before the Board.
23. Accordingly, I find the appeal is without merits and is dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

Gitunga for the Appellant

No appearance for the Respondent

Carol – Court Assistant

