



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CIVIL APPEAL NO.41 OF 2007

Appeal arising from BGM CM DISC. NO.53 of 2006

NATHAN MWEMA AMKOA t/a

ONGUMWE AUCTIONEERS :.....: APPELLANT

~VRS~

AUCTIONEERS LICENCING BOARD:.....: RESPONDENT

JUDGMENT

The Appellant Nathan Mwena Amko t/a Ongumwe Auctioneers appeals against the decision of the Auctioneers Board in Disciplinary Cause No.53 of 2006. In his grounds of appeal, the Appellant has eight grounds which may be summarized as follows:

1. That the decision of the board was a nullity for failure to comply with the provisions of Rules 11 of the Auctioneers Rules and section 18 (3) and (4) of the Auctioneers Act.

2. That the board failed to serve the relevant notices on him and gave contradictory dates in the notice and the forwarding letter.

Mr. Makokha argued the grounds of appeal. The appeal was opposed by the Board who were represented by Mr. Muiruri.

The provisions of Rule 11 are to the effect all the decisions of the board be signed by the chairman and the secretary:

R.11: “All instruments made by and all decisions of the Board shall be signified under the hand of the Chairman and Secretary.”

In the instant case, the decision of the Board was not signed. The proceedings were certified as true copy of original and signed by one person under the title of Board/Secretary. One cannot tell who among the two officials signed the decision. The decision is therefore not in compliance with the provisions of Rule 11 of the schedule.

Section 18 (3) and (4) provide that the notice for revocation of license be served on the auctioneer. The Appellant claims that the notice and all relevant correspondence were sent through the wrong address not less than 21 days before the date of the intended revocation. The notice in question dated 06/06/2007 was addressed to the Appellant of P. O. Box 91, Busia (K). The Appellant’s address was P. O. Box 91, Vihiga. The notice could not reach the Appellant because it went to the wrong address. The issuing of notice was therefore not in compliance with the law. The effect is that the same never reached the Appellant. His licence was therefore wrongly revoked.

The Appellant also complains that the notice to communicate the decision that he had been fined Ksh.30,000/= was also not communicated to him. I find no correspondence to that effect in the record. It is likely that the notice was never sent to the appellant or was sent to the wrong address.

In the case of **MANUEL OMINDE t/a KURONYA AUCTIONEERS VS AUCTIONEERS KAKAMEGA CIVIL APPEAL NO.20 OF 2006** Licensing Board, the Board’s decision was quashed due to non-compliance with Rule 11 of the Act. I concur with the judgment of my brother Justice F. Ochieng.

For the foregoing reasons, I find that the decision of the Board to revoke the licence of the Applicant was wrongful. The two decisions of the Board to fine the Appellant and revoke his licence are hereby quashed. The Board to meet the costs of the appeal.

F. N. MUCHEMI

JUDGE

Judgment dated and delivered on the 2nd day of December, 2010 in the presence of Mr. Murunga for Makokha for the Appellant.

F. N. MUCHEMI

JUDGE



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