



LAWS OF KENYA



AUCTIONEERS ACT

CHAPTER 526

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CHAPTER 526

AUCTIONEERS ACT

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SCHEDULE – MEETINGS AND PROCEDURE OF THE BOARD

CHAPTER 526

AUCTIONEERS ACT

[Date of assent: 16th October, 1996.]

[Date of commencement: 15th August, 1997.]

An Act of Parliament to consolidate and amend the law relating to auctioneers, to provide for the licensing and regulations of the business and practice of auctioneers, and for connected purposes

[L.N. 146/1997, Act No. 2 of 2002, Act No. 7 of 2007.]

1. Short title

This Act may be cited as the Auctioneers Act, 1996.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**advocate**” has the meaning assigned to it in section 2 of the Advocates Act (Cap. 16);

“**auctioneer**” includes every person who sells by auction;

“**Board**” means the Auctioneers Licensing Board established by section 3;

“**Council of the Law Society**” means the Council of the Law Society of Kenya elected under section 13 of Law Society of Kenya Act (Cap. 18);

“**court**” means any court of competent jurisdiction;

“**licence**” means a licence issued under this Act;

“**licensed auctioneer**” means an auctioneer licensed under this Act.

(2) Subject to subsection (3), any person who—

- (a) attaches for sale any movable or immovable property in execution of a court order made pursuant to the provisions of any written law or contract;
- (b) sells or offers for sale any movable or immovable property or any interest therein by auction or by any other mode of sale by competition;
- (c) levies distress for rent or distrains under the provisions of any written law;
- (d) carries out evictions under an order of a court;
- (e) repossesses goods from any person pursuant to the provisions of any written law or contract,

shall, for the purposes of this Act, be deemed to carry on the business of an auctioneer.

- (3) Notwithstanding subsection (2), a member of the Board may—
- (a) at any time resign from office by notice in writing to the Chief Justice;
 - (b) be removed from office by the Chief Justice if the member—
 - (i) has been absent from three consecutive meetings of the Board without permission of the Chairman;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iv) is incapacitated by prolonged physical or mental illness; or
 - (v) is otherwise unable or unfit to discharge his functions.

[Act No. 2 of 2002, Sch.]

3. Establishment and membership of the Board

(1) There is established a Board to be known as the Auctioneers Licensing Board which shall consist of—

- (a) one person qualified for appointment as a judge of the High Court or the Court of Appeal under Part I of Chapter IV of the Constitution appointed by the Chief Justice, who shall be chairman;
- (b) the Permanent Secretary in the Office of the President for the time being responsible for matters relating to provincial administration, or his representative;
- (c) one Chief Magistrate to be appointed by the Chief Justice;
- (d) two advocates, of not less than ten years' standing to be nominated by the Council of the Law Society;
- (e) four auctioneers of not less than five years' standing, nominated by the Chief Justice on the recommendation of the association;
- (f) *deleted by Act No. 2 of 2002, Sch.*;
- (g) one person nominated by the National Chamber of Commerce and Industry;
- (h) one person nominated by the Kenya Bankers Association, to represent financial institutions.

(2) A member of the Board other than an *ex officio* member shall hold office for three years but shall be eligible for re-appointment for one further term of three years.

[Act No. 2 of 2002, Sch., Act No. 7 of 2007, Sch.]

4. Object and functions of the Board

(1) The object and purpose for which the Board is established is to exercise general supervision and control over the business and practice of auctioneers.

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) license and regulate the business and practice of auctioneers;

- (b) supervise and discipline licensed auctioneers;
- (c) to carry out training programmes for licensed auctioneers.

[Act No. 2 of 2002, Sch.]

5. Powers of the Board

The Board shall have such powers as are necessary or expedient for the proper discharge of its functions under this Act.

6. Meetings and procedure of the Board

The conduct and regulation of the business and affairs of the Board shall be as provided for in the Schedule, but subject thereto, the Board may regulate its own procedure.

7. Secretary to the Board

(1) The Chief Justice shall appoint a public officer to be the Secretary of the Board and such Secretary shall hold office for a renewable term of three years.

(2) Where the person appointed under subsection (1) is for any reason unable to continue discharging his functions the Chief Justice may appoint another public officer to act in that capacity as the Secretary to the Board and such Secretary shall hold office for a renewable term of three years.

[Act No. 2 of 2002, Sch.]

8. Revenue and expenditure

(1) The expenses of the Board shall be defrayed out of moneys provided by Parliament for that purpose.

(2) All fees and other moneys received by the Board shall be paid into the Consolidated Fund.

9. Prohibition against unlicensed auctioneers

(1) No person shall, in Kenya, carry on the business of an auctioneer unless he holds a valid license issued by the Board under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

10. Eligibility for licence

(1) Subject to subsection (2) of this section and to section 11, a person who satisfies the Board that he—

- (a) is a Kenyan citizen;
- (b) has sufficient knowledge and experience in the business and practice of an auctioneer;
- (c) has not been convicted in the ten years immediately preceding the application of an offence involving fraud, dishonesty or immorality and is otherwise of good character and reputation;

- (d) is not disqualified under the provisions of this Act from obtaining or holding a licence,

may, on application to the Board, be licensed to carry on the business of an auctioneer.

(2) Notwithstanding the provisions of subsection (1), a person who—

- (a) is a judge or a magistrate or is employed in any capacity as an executive or subordinate officer of a court; or
- (b) *deleted by Act No. 2 of 2002, Sch.*
- (c) is an advocate deemed under section 30A of the Advocates Act (Cap. 16) to be practising in his professional capacity or is employed in any capacity by such advocate: or
- (d) is a public officer or an officer or employee of any local authority, statutory body or state corporation,

shall not be eligible to be licensed under this Act.

(3) A person who is a Member of Parliament or a Councillor shall be entitled to hold a general licence enabling him to realise securities and carry out repossessions in such parts of the country as may be specified therein.

(4) A person who obtains or holds a licence contrary to any of the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[Act No. 2 of 2002, Sch.]

11. Issue of licence in special circumstances

Notwithstanding the provisions of section 10, the Board may issue a licence to a person who—

- (a) at the commencement of this Act is aged sixty-five years or more but is otherwise eligible to be licensed and has held an auctioneer's licence for the three years immediately preceding the commencement, to carry on business for a period not exceeding twelve months from the 1st January next following the date of commencement; or
- (b) is not a Kenya citizen but is otherwise eligible to be licensed, to hold any auction of a specialized nature by reason of his knowledge and experience in conducting such auction.

12. Licensing of auctioneers

(1) An application for a licence shall be made in the prescribed form and shall be forwarded to the Board together with the prescribed fee.

(2) In considering the application, the Board may require the applicant to supply such additional information in support of the application as it may consider necessary.

(3) The Board may, subject to the provisions of this Act and to the payment of the prescribed fee, issue a licence in the prescribed form to the applicant.

(4) Licences issued by the Board shall be classified in such manner as may be prescribed.

(5) A licence issued under this section shall, unless earlier revoked, be valid for twelve months next following the date of issue:

Provided that where an application for its renewal is made, the licence shall be deemed to continue in force until the application for its renewal is determined.

13. Auctioneer's identification card

(1) In addition to the licence, the Board shall issue to a licensed auctioneer an identification card in permanent form, bearing the full names and address of the licensed auctioneer and the classification of his licence.

(2) A licensed auctioneer shall, at all times while conducting auctioneer's business within the meaning of this Act, wear his identification card.

(3) An identification card issued to a licensed auctioneer under this section shall be incidental to the licence and shall be subject to renewal, revocation or suspension by the Board.

14. Conditions of licence

(1) A licence issued under this Act shall not be transferable.

(2) A licensed auctioneer shall carry on business in his own name or in the name of a firm all of whose partners are licensed auctioneers:

Provided that such licensed auctioneer or firm of auctioneers may employ a licensed auctioneer who shall nevertheless continue to be personally accountable to the Board.

(3) The liability of a licensed auctioneer, in relation to the conduct of this auctioneers business, shall be unlimited.

(4) Subject to subsection (5), before the grant of a licence, the applicant shall, if so required in any rules made under this Act, give security in such form and amount as may be prescribed as assurance for the faithful discharge of his duties.

(5) Notwithstanding the provisions of subsection (4), the Board may dispense with the requirement of that subsection with respect to an auctioneer intending to enter into full time employment with a licensed auctioneer or firm of auctioneers, if such requirements have been met by his intended employer.

(6) Except as may otherwise be provided by law, a licence under this Act shall not authorize any person to deal in or sell (either on account of or for the benefit of himself or of any other person) anything the dealing or sale of which is restricted to persons duly licensed or authorized in that behalf:

Provided that it shall not be necessary for an auctioneer to take out a licence for the sale of liquor, television, radio or video sets or other items seized in the execution of a court decree or in distress for rent.

(7) In addition to the conditions set out in this section, the Board may impose any conditions it may consider necessary on a licence and may add to, substitute or vary such conditions.

(8) A person who breaches any of the conditions set out in this section, or any condition imposed by the Board under subsection (7) commits an offence.

15. Condition with respect to sole proprietors

- (1) A licensed auctioneer who—
- (a) carries on business as a sole proprietor; or
 - (b) is the sole surviving partner in a firm of auctioneers,

shall, within ninety days of being licensed, nominate for approval by the Board, two licensed auctioneers who shall be responsible for winding up his business in the event of his death or the revocation of his licence.

(2) A licensed auctioneer may, with the approval of the Board, at any time change his nominees under subsection (1).

(3) If a licensed auctioneer fails to meet the requirements of subsection (1) within the prescribed period, the Board shall suspend the auctioneer's licence and the licence shall remain so suspended until the auctioneer meets the said requirements.

(4) Upon the death or the revocation of the licence of an auctioneer to whom this section applies, the licensed auctioneers nominated under this section shall, on being so directed by the Board, proceed to wind up the auctioneer's business:

Provided that where no action is taken within thirty days of the Board's directions, the Board may nominate one or more licensed auctioneers to wind up the business and may take such further steps as may be necessary to assist in such winding up.

16. Renewal of licence

(1) The Board may, on application by a licensed auctioneer, renew a licence for a further period of twelve months.

- (2) An application under this section shall—
- (a) be made in the prescribed form and forwarded to the Board together with the prescribed fee;
 - (b) be lodged with the Board at least one month prior to the expiry of the licence; and
 - (c) be considered in accordance with the provisions of sections 10 and 12.

17. Refusal to grant or renew licence

- (1) The Board may refuse to grant or renew a licence if it is satisfied that—
- (a) the information contained in the application therefor is false or untrue in any material particular;
 - (b) the applicant does not meet any of the requirements for the issue or renewal of a licence.

(2) Where the Board refuses to grant or renew a licence, it shall forthwith notify the applicant in the prescribed form, specifying the reasons for such refusal.

18. Revocation of licence

(1) In addition to the powers of the Board under section 24, the Board may revoke a licence if—

- (a) it discovers that the licensed auctioneer made a statement in or in connection with the application therefore which he knew to be false or untrue in any material particular;
- (b) any event occurs which renders the licensed auctioneer ineligible to hold a licence under this Act;
- (c) the licensed auctioneer's business is wound up or is otherwise dissolved;
- (d) the licensed auctioneer is in breach of any condition attached to the licence; or
- (e) if the licensed auctioneer does not comply with any of the provisions of this Act or any rules made there under.

(2) The provisions of section 9 of the Probation of Offenders Act (Cap 54) shall not apply to this section.

(3) Where the revocation of a licence is contemplated, the Board shall serve the licensed auctioneer with a notice of revocation in the prescribed form.

(4) A notice under subsection (3) shall be served not less than twenty-one days before the date of the intended revocation and shall specify the grounds for such revocation, and the Board shall consider any representations made to it in writing by the licensed auctioneer during that period and shall take every reasonable precaution to ensure fairness in the exercise of its powers under this section.

(5) The revocation of a licence shall take effect from the date of service of a notice under subsection (4) if such notice is served on the licensed auctioneer personally, or, where the notice is sent through registered post, on a date seven days after the date of posting.

(6) The Board shall, within fourteen days of the revocation of a licence, cause the name of the auctioneer whose licence is revoked to be published in the *Gazette* and in one local daily newspaper circulating in the area where the auctioneer carries on business.

(7) An auctioneer whose licence is revoked shall forthwith surrender his licence to the Board and shall not be eligible to hold a licence under this Act for a period of five years starting from the effective date of the revocation.

[Act No. 2 of 2002, Sch.]

19. Suspension of licence

(1) The Board may suspend a licence for a period not exceeding six months if—

- (a) the licensed auctioneer is charged with any offence involving fraud, dishonesty, immorality, violence or malicious damage to property;

- (b) having received a complaint against a licensed auctioneer under section 24 in respect of his conduct in executing court orders or in distraining, the Board considers it appropriate to suspend the licence pending further investigation of the complaint; or
- (c) in the execution of his duties, the licensed auctioneer has acted in a manner incompatible with his status as an officer of the court.

(2) Where a licence is suspended, the Board shall serve a notice of suspension in the prescribed form on the licensed auctioneer personally or through registered post, specifying the reason for the suspension.

(3) The suspension of a licence under this section shall take effect from the date of service of a notice under subsection (2) if served personally on the licensed auctioneer or, if sent through registered post, on a date seven days after the date of posting.

20. Register of licences

(1) The Board shall keep a register, in such form as it may determine, of all licences issued under this Act and shall enter therein in respect of every licence—

- (a) the full names and identity card number of the auctioneer;
- (b) the place of business in respect of which the licence is granted;
- (c) the district or districts to which the licence relates;
- (d) the date of expiry of the licence;
- (e) particulars of any amendment to the licence;
- (f) particulars of any revocation or suspension of the licence;
- (g) any other particulars the Board may require to be recorded.

(2) Any person may, during working hours and on payment of the prescribed fee, inspect the register of licences:

Provided that a person who is—

- (a) a member of the police force or a public officer acting in the course of his duty; or
- (b) authorized in writing by the Board,

may inspect the register without payment of any fee.

21. Auction sales

(1) The date, time and place of every sale by auction shall be advertised in the prescribed manner and such sale shall take place on the date, at the time and at the place so advertised.

(2) Where any movable or immovable property is put up for sale by auction in lots, each lot shall *prima facie* be deemed to be the subject of a separate contract of sale.

(3) It shall be stated in the particulars or conditions of any sale by auction of any property whether such sale shall be subject to a reserve price or not or whether a right to bid is reserved.

(4) If it is stated that the sale be without reserve or to that effect, then it shall not be lawful for the seller or any person employed by him to bid at such sale, or for the auctioneer to take knowingly any such bidding:

Provided that if it is stated that the sale shall be subject to a right for the seller to bid, then it shall be lawful for the seller or for any person acting on his behalf to bid at such auction.

(5) If it is stated that the sale will be subject to a reserve price as regards any one or more lots, it shall be lawful for the seller or any person acting on his behalf to give one bid for each such lot and no more.

(6) If the seller or any person acting on his behalf bids at any sale contrary to any of the provisions of this section, any purchaser may refuse to fulfill his purchase:

Provided that the highest *bona fide* bidder shall be entitled, if he shall so elect, to have the property at the price offered by him.

(7) No auctioneer shall make a bid either on behalf of himself or as agent for any other person unless on making such bid, he announces that it is his bid.

(8) A bidder may retract his bid at any time before the sale is complete.

(9) A person who, knowingly—

(a) receives or makes any bid contrary to the provisions of this section; or

(b) makes a bid which he cannot honour or is fraudulent, or is intended to avoid a valid sale which is subject to the bid,

commits an offence.

(10) Where a person convicted of an offence under this section is a licensed auctioneer, he shall, in addition to any other penalty imposed, be liable to having his licence revoked.

22. Recovery of charges by auctioneer

(1) A licensed auctioneer making, any sale other than an auction of attached property shall, unless it is otherwise agreed between him and the seller, be entitled to sue for, recover and discharge all sums due in respect of the sale.

(2) A licensed auctioneer making any sale, unless it is otherwise agreed between him and the seller, shall be liable to the due payment to the seller of the net proceeds of all sales of property within fifteen days of the sale.

23. Duties of auctioneers

A licensed auctioneer shall—

(a) at all times act in a manner befitting an officer of the court and shall ensure that his employees, servants or agents act in like manner;

(b) act in accordance with such rules as may be prescribed when repossessing, attaching, storing or selling any property pursuant to the provisions of any written law or contract;

(c) maintain such books, accounts, records or other documents as may be prescribed and furnish the same to the Board at such time and in such manner as may be prescribed.

24. Complaints against auctioneers

(1) A complaint against a licensed auctioneer of misconduct, which expression includes disgraceful or dishonourable conduct incompatible with the status of an auctioneer, may be made to the Board by any aggrieved person within a period of one year after the occurrence of the event giving rise to the complaint.

(2) Where a person makes a complaint under this section, the complaint shall be by affidavit by himself setting out the allegations of misconduct which appear to arise on the complaint, and shall be forwarded to the Board together with the prescribed fee.

(3) The Board shall give the licensed auctioneer against whom the complaint is made an opportunity to file an affidavit in reply to the allegations and to appear before it, and shall furnish him with a copy of the complaint, and of any evidence in support thereof, and shall give him an opportunity of inspecting any relevant document not less than seven days before the date fixed for the hearing:

Provided that where in the opinion of the Board the complaint does not disclose any *prima facie* case of misconduct, the Board may at any stage of the proceedings, dismiss the complaint without requiring the licensed auctioneer to whom the complaint relates to answer any allegation made against him and without hearing the complaint.

(4) After hearing the complaint and the licensed auctioneer to whom the complaint relates, if he wishes to be heard, and considering the evidence adduced, the Board may order that the complaint be dismissed or if it is of the opinion that a case of misconduct on the part of the auctioneer has been made out, the Board may order—

- (a) that the licensed auctioneer be admonished; or
- (b) that the auctioneer's licence be suspended for such period, not exceeding six months as the Board thinks fit; or
- (c) that the auctioneer's licence be revoked; or
- (d) that such condition or conditions as it deems appropriate be attached to the auctioneer's licence; or
- (e) that the licensed auctioneer pay a fine not exceeding one hundred thousand shillings; or
- (f) that the licensed auctioneer pay compensation not exceeding one hundred thousand shillings to the person damnified by his misconduct; or
- (g) that the auctioneer be disqualified from holding an auctioneer's licence for such period as the Board thinks fit; or
- (h) such combination of the above orders as the Board thinks fit.

(5) The Board may make such order as to the payment by any party of any costs or witness' expenses and as to the expenses of the Board or the members thereof in connection with the hearing of any complaint as it may think fit.

(6) Any order of the Board may be filed with a subordinate court and shall, upon service of the notice of filing thereof upon the licensed auctioneer, be enforceable in the same manner as an order of the subordinate court to the like effect.

[Act No. 2 of 2002, Sch.]

25. Appeals

(1) A person aggrieved by a decision of the Board under this Act may, within thirty days after receipt by him of written notice of such decision, appeal against the decision to the High Court by giving notice of appeal to the Registrar thereof setting out the grounds of appeal within thirty days after the giving by him of the notice.

(2) The decision of the High Court on an appeal under this section shall be final.

26. Right to recover damages from auctioneer

(1) Subject to the provisions of any other written law, a person who suffers any special or general damages by the unlawful or improper exercise of any power by a licensed auctioneer shall be entitled to recover any damages directly suffered by him from the auctioneer by action:

Provided that nothing in this section shall—

- (a) prevent the auctioneer from claiming contribution or indemnity from any other person;
- (b) limit the damages recoverable under any other written law.

27. General penalty

A person convicted of an offence under this Act for which no other penalty is specified shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

28. Court may order revocation or suspension of licence

(1) A court in imposing a penalty on a licensed auctioneer for an offence under this Act or under any other written law may, if in the opinion of the court the offence is of such nature as to warrant the suspension or revocation of the auctioneer's licence, order the suspension or revocation of the licence.

(2) The court shall forthwith notify the Board of every order under subsection (1).

29. Acquittal to bar to disciplinary proceedings

The acquittal of a licensed auctioneer of an offence shall not prejudice the Board's power to take disciplinary action against the auctioneer in accordance with the provisions of this Act.

30. Rules

The Chief Justice may make Rules for the better carrying out of the provisions of this Act and in particular, such rules may provide for—

- (a) the manner of issue, amendment, renewal, revocation and suspension of licenses;

- (b) the duties of licensed auctioneers when attaching, repossessing, storing or selling property under the provisions of any written law or contract;
- (c) the duties of licensed auctioneers when acting as officers of the court, subject to the provisions of any other written law;
- (d) the accounts and records to be kept by licensed auctioneers;
- (e) the procedure for disciplining licensed auctioneers;
- (f) the forms to be used, the fees payable by and the remuneration of licensed auctioneers; and
- (g) the training of auctioneers.

31. Repeal of Cap. 20 and Cap. 526

The Court Brokers Act (Cap. 20) and the Auctioneers Act (Cap 526) are repealed.

32. Transitional

No person shall carry on the business of an auctioneer after the 31st December next following the date of commencement of this Act unless he holds a valid licence under this Act:

Provided that an auctioneer who—

- (a) had a licence valid until the 31st December of the previous year; and
- (b) being eligible, has applied for renewal of the licence for the ensuing year but has not been notified of the Board's decision thereon,

may carry on business within the terms of his previous licence until the application for renewal is determined.

33 Amendment of Cap. 23

Section 3 of the Law of Contract Act (Cap. 23) is amended by deleting subsection (4) and inserting the following new subsection—

“(4) Subsection (3) shall not apply to a contract made in the course of a public auction by a licensed auctioneer within the meaning of the Auctioneers Act, 1996 nor shall anything in that subsection affect the creation or operation of a resulting, implied or a constructive trust”.

34. Amendment of Cap. 293

The Distress for Rent Act (Cap. 293) is amended—

- (a) by deleting the word “bailiff” wherever it occurs and substituting therefor the words “licenced auctioneer”;
- (b) in section 2—
 - (i) by deleting the definition of “**approved valuer**” and substituting therefor the following new definition—

“**approved valuer**” means a valuer licensed under the Valuers Act (Cap. 532) or a licensed auctioneer, but excludes an auctioneer levying distress or any person acting on his behalf.

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- (ii) by inserting the following new definition in proper alphabetical sequence—
 - “**licensed auctioneer**” has the meaning assigned to it in section 2 of the Auctioneers Act, 1996”.
 - (c) in section 3(1) by deleting the words “Subject to the provisions of this Act” and inserting the words “Subject to provisions of this Act and any other written law”;
 - (d) in section 4—
 - (i) by deleting the words “ten days” in subsection (1) and inserting the words “fourteen days”;
 - (ii) by deleting the words “the ten days” in subsection (2) and inserting the words “seven days after the distraint”;
 - (iii) by inserting immediately after the words “public auction” , the words “by a licensed auctioneer”;
 - (iv) by deleting the words “the ten days notice” in subsection (3) and inserting the words “seven days after the distraint”;
 - (v) by deleting the words “ten days” in subsection (4) and inserting “fourteen days”;
 - (e) in section 6(1)—
 - (i) by deleting the words “ten days” wherever they occur and inserting the words “fourteen days”;
 - (ii) by inserting immediately after the word “may” in the second line, the words “instruct a licensed auctioneer to”;
 - (f) in section 9—
 - (i) by inserting immediately after the word “chattels”, in the eleventh line, the words “instruct a licensed auctioneer to”;
 - (ii) by deleting the word “landlord or lessor or other person entitled to arrears of rent” and inserting the words “a licensed auctioneer”;
 - (g) by repealing section 11 and inserting the following new section—

11. Landlord may break into house to seize goods fraudulently secured therein

Where any goods or chattels fraudulently or clandestinely conveyed or carried away by a tenant or a lessee or his servant or agent, or other person or persons aiding or assisting therein are kept in any house, barn, stable, out house, yard, close or place locked up, fastened or otherwise secured so as to prevent the goods or chattels from being taken and seized as distress for arrears of rent, a licensed auctioneer acting on behalf of the landlord or lessor may, in the day time, break into such place and may take and seize the goods or chattels for the arrears of rent as he might have done by virtue of this Act if those goods or chattels had been put in an open field or place.

- (h) in section 12(1)—
 - (i) by deleting the words “a lessor or landlord or his bailiff” in the first line and inserting “a licensed auctioneer acting on behalf of the lessor or landlord”;
 - (ii) by deleting the words “the lessor or landlord hires or otherwise” in the twelfth line and inserting the words “the lessor or landlord or a licensed auctioneer hires or otherwise”;
- (i) in section 15, by deleting the words “and no more”;
- (j) by repealing section 8;
- (k) in section 25(1), by deleting the words “by the landlord”.

35. Amendment of Cap. 300

Section 77 of the Registered Land Act is amended—

- (a) in subsection (1), by inserting immediately after the words “public auction”, the words “through a licensed auctioneer”;
- (b) by inserting the following new subsection immediately after subsection (1)—

“(1A) in subsection (1), the expression “**licensed auctioneer**” has the meaning assigned to it in section 2 of the Auctioneers Act, 1996.”

36. Amendment of Cap. 323

Section 33 of the Agricultural Finance Corporation Act (Cap. 323) is amended—

- (a) in subsection (1), by inserting immediately after the words “public auction” the words “through a licensed auctioneer”;
- (b) by inserting the following new subsection—

“(5) in subsection (1), the expression “**licensed auctioneer**” has the meaning assigned to it in section 2 of the Auctioneers Act, 1996.”

37. Amendment of Cap. 533

The Estate Agents Act (Cap. 533) is amended—

- (a) in subsection (3) of section 2 by inserting the following new paragraph—

“(f) by a licensed auctioneer selling immovable property or any interest therein by auction”;
 - (b) by inserting the following new subsection—

“(4) in subsection (3)(f), the expression “**licensed auctioneer**” has the meaning assigned to it in section 2 of the Auctioneers Act, 1996.”
-

SCHEDULE

[Section 6, Act No. 2 of 2002, Sch.]

MEETINGS AND PROCEDURE OF THE BOARD

1. The Board shall meet at least once every three months.
2. A meeting of the Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision or on any occasion on which the chairman in consultation with the secretary shall decide that a meeting is necessary, on a date and at a time determined by the chairman.
3. The chairman shall, on the application of at least four members, convene a special meeting of the Board.
4. Unless three-quarters of the total membership of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.
5. The quorum for the conduct of a meeting of the Board shall be—
 - (a) in the case of a meeting to consider a matter other than a disciplinary matter, six members; or
 - (b) in the case of a meeting to consider a disciplinary matter, three members:

Provided that in each case at least one member shall be a qualified lawyer.

6. (a) The chairman shall preside at every meeting of the Board at which he is present but in the absence of the chairman from a meeting, the Board shall elect one of the advocates appointed under section 3(1)(d) who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(b) Where the Secretary to the Board is unable to attend a meeting of the Board, the Board shall appoint one of the members appointed under section 3(1)(d) to serve as Secretary with respect to that meeting.

[Act No. 2 of 2002, Sch.]

7. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.
8. Subject to paragraph 5, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
9. For the purposes of any application or complaint made to it under this Act, the Board may administer oaths or affirmations, and the complainant and the licensed auctioneer to whom a complaint relates, and an applicant making any application to the Board may take out a summons to give evidence or to produce documents, but no person shall be compellable under any such summons to produce any document which he could not legally be compelled to produce at the trial of a suit.

10. All proceedings before the Board shall be deemed for the purposes of Chapter XI of the Penal Code (Cap. 63), to be judicial proceedings and for the purposes of Chapter VIII of the Evidence Act (Cap. 80) to be legal proceedings.

11. All instruments made by and all decisions of the Board shall be signified under the hand of the chairman and the secretary.

12. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.

13. Except as provided in this Schedule, the Board shall regulate its own procedure.

CHAPTER 526

AUCTIONEERS ACT

SUBSIDIARY LEGISLATION

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AUCTIONEERS RULES, 1997

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AUCTIONEERS RULES, 1997

[L.N. 120/1997, Corr. No. 84/1997, L.N. 144/2009.]

PART I – PRELIMINARY

1. Citation

These Rules may be cited as the Auctioneers Rules, 1997.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**accountant’s certificate**” means certificate issued under rule 25;

“**client**” means a person on whose account an auctioneer holds or receives clients’ money;

“**client account**” means a current or deposit account at a bank or with a building society or a financial institution (as defined under the Banking Act (Cap. 488)) in the name of the auctioneer but in the title of which either the word “client” or the word “trust” appears;

“**client money**” means money held or received by an auctioneer on account of a person for whom he is acting in relation to the holding or receipt of such money either as auctioneer or, in connection with his practice as an auctioneer agent, bailee, trustee, stakeholder or in any other capacity, and includes—

- (a) money held or received by an auctioneer by way of deposit against fees to be earned or disbursements to be incurred; and
- (b) money held or received as or on account of a trustee, whether or not the auctioneer is sole trustee or trustee with others, but does not include—
 - (i) money to which the only person entitled is the auctioneer himself, or in the case of a firm of auctioneers one or more of the partners in the firm; or
 - (ii) money held or received by an auctioneer in payment of, or on account, of an agreed fee in any matter;

“**money**” includes bank notes, currency notes, certificates of deposit, bank drafts, cheques and any other negotiable instruments;

“**trustee**” includes executor, administrator, manager under the Mental Treatment Act (Cap. 248), trustee of a will or settlement, trustee in bankruptcy, receiver or liquidator.

PART II – LICENSING AND IDENTIFICATION

3. Application for a licence

(1) The Board shall issue two kinds of licences—

- (a) a class “A” licence which shall be a general auctioneering licence limited to specific districts;
- (b) a class “B” licence which shall be a general auctioneering licence which shall enable the holder to realize charged securities, repossess and sell any property throughout Kenya, execute court orders, and to levy distress within specific districts.

*Auctioneers***[Subsidiary]**

(2) An application for a class "A" licence under section 12 of the Act shall be in Licensing Form I set out in the Schedule and shall be accompanied by—

- (a) such application fee as the Chief Justice may prescribe;
- (b) the following recommendations—
 - (i) a current certificate of good conduct from the Criminal Investigation Department obtained at least six months prior to the application;
 - (ii) a recommendation of Licensing Form 2 set out in the Schedule from the area magistrate and the auctioneer or firm of auctioneers under whom the applicant has had experience for the two years prior to the application;
 - (iii) a recommendation on Licensing Form 3 set out in the Schedule from either a religious leader, or the locational chief of the area of the applicant's residence, or an advocate of at least 10 years' standing;
- (c) evidence that the applicant has four "O" level passes including passes in English and mathematics;
- (d) evidence that the applicant has available to him secure premises acceptable to the Board, sufficient to store and auction goods;
- (e) a cash deposit of one hundred thousand shillings or a guarantee of a similar amount from a bank or insurance company properly executed and approved by the Board for the due performance by the auctioneer of his duties and obligations under the Act and these Rules or such higher amounts as the Chief Justice shall prescribe valid for three years from the date of the proposed commencement of the licence applied for;
- (f) evidence that the applicant has insured his premises against burglary, fire and theft for a minimum sum of five hundred thousand shillings or such higher amount as the Chief Justice may prescribe;
- (g) evidence that the applicant has a working knowledge of the rules applicable to auctioneering and attachment and sale of properties with a minimum of three years' experience with a reputable firm of auctioneers.

(3) An application for a class "B" licence made under section 12 of the Act shall, in addition to the requirements stated in rule 3(2)(b) to (e), be accompanied by—

- (a) such application fee as the Chief Justice may prescribe;
- (b) evidence of the applicant having held a class "A" licence for at least three (3) years;
- (c) evidence that the applicant has insured his premises against burglary, fire and theft for a minimum of one million shillings and for goods in trust for a minimum sum of five hundred thousand shillings or such higher amounts as the Chief Justice may prescribe.

(3A) The applicant shall only be required to comply with paragraphs (2)(d), (e) and (f) after the Board approves his application.

[L.N. 144/2009, r. 2.]

4. Issuance of identification card to auctioneers

At the time of issuing a licence the Board shall also issue an identification card to the licensee under section 13 of the Act which identification card shall be in such form with such safeguards as to validity and against counterfeiting as the Board may consider fit.

PART III – ATTACHMENT AND SALE OF PROPERTY

5. Application of Part III

(1) This Part shall apply to the attachment and sale of movable and immovable property under warrants of court and letters of instruction from third parties, including distress for rent and repossession, unless—

- (a) otherwise provided by any other written law; or
- (b) the court otherwise directs under the Civil Procedure Rules (Cap. 21, Sub. Leg.).

(2) A letter of instruction under subrule (1) shall be in Sale Form 1 set out in the Schedule.

6. Register of warrants and letters of instruction

An auctioneer shall keep a register of all warrants and letters of instruction passed to him by a client, and shall record in it—

- (a) the number of the case under which the warrant was issued and the name of the court that issued it;
- (b) the name and address of the creditor and the advocate (if any) who issued the letter of instruction;
- (c) the date he received each warrant or letter of instruction;
- (d) the amount he is required by the warrant or letter of instruction to recover;
- (e) the date of return endorsed upon the warrant;
- (f) an itemised inventory of the property to be sold showing the value to be placed on each lot;
- (g) the amount realised in respect of each item sold;
- (h) the date the warrant was returned to the court;
- (i) the date and amount of the proceeds of any sale forwarded to the court, or to the creditor, or his advocate; and
- (j) the charges levied by the auctioneer.

7. Payment of auctioneer's charges

A debtor shall pay the charges of the auctioneer unless—

- (a) that debtor cannot be found; or
- (b) he has no goods upon which execution can be levied; or
- (c) the sale proceeds are insufficient to cover the charges,

in which cases the creditor shall pay the charges or the deficiency thereof.

8. Insurance

(1) Subject to these Rules, the auctioneer seizing or repossessing goods under a court warrant or letter of instruction shall be responsible for the safe custody and insurance of any movable property seized or repossessed by him until it has been sold or the seizure or repossession is withdrawn.

(2) In case of a stay of the seizure or repossession of any property or objection proceedings to the seizure the auctioneer shall immediately notify the creditor and the debtor, and the court (if any) of the arrangements he considers desirable or necessary for the safe custody, repair, maintenance, storage, transport and insurance of the goods seized

[Subsidiary]

or repossessed and the cost thereof pending determination of the stay or objection and may request the court to fix such fees and costs and payment in advance or as the court may think just, such fees and costs being in addition to those provided for in these Rules.

(3) Where the property seized is livestock the auctioneer receiving the warrant or letter of instruction shall forthwith notify the creditor and the debtor and the court (if any) of the arrangements he considers desirable or necessary for the safe custody, health, feeding, watering or transport of the livestock seized, the costs thereof and their payment in advance, or as the court may think just, such fees and costs being in addition to those provided for in these Rules.

9. Police assistance

(1) Where an auctioneer has reasonable cause to believe that—

- (a) he may have to break the door of any premises where goods may be seized or repossessed; or
- (b) he may be subject to resistance or intimidation by the debtor or other person; or
- (c) a breach of the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property,

the auctioneer shall request for police escort from the nearest police station in order to carry out his duties peacefully.

(2) An application under this rule shall be by motion by way of a miscellaneous application supported by an affidavit and may be heard *ex parte*.

[L.N. 144/2009, r. 3.]

10. Independent valuation of goods attached

A debtor may, at any time before the property seized or repossessed is sold, apply to a court for an order that the property be valued by an independent valuer.

11. Contents of court warrant or letter of instruction

(1) A court warrant or letter of instruction shall include, in the case of—

- (a) movable property—
 - (i) the decretal amount, date of decree, date of return to court or where there is no decree, the exact amount to be recovered as at a date not later than the date of the letter of instruction plus the estimated daily or monthly interest or rent to accrue thereafter;
 - (ii) the person amongst whom the decree is to be executed;
 - (iii) the exact location of goods;
 - (iv) the person to point out the goods;
 - (v) where ascertainable, a list of the goods to be attached or repossessed;
 - (vi) where appropriate, reserve prices or where there are to be no reserve prices, a record of the reasons for not selling subject to such reserve prices;
- (b) immovable property—
 - (i) as in (i) to (v) in paragraph (a);
 - (ii) the land reference number, file number, plot number, or flat number, as the case may be;
 - (iii) the area in hectares or in square metres;

[Subsidiary]

- (iv) the user and any restrictions by statute or otherwise on the disposition of the property or any interest in it;
- (v) the tenure and in the case of leasehold, particulars of the landlord and the annual land rent;
- (vi) the location, and in the case of land situated within a township or municipality, the amount of the most recently available annual site value tax;
- (vii) on accurate description of improvements and developments;
- (viii) the names, and addresses of encumbrancers on the title together with—
 - (aa) the estimated amount due to any encumbrancer; and
 - (bb) the estimated amount of arrears of land rent rates and taxes;
- (ix) the names addresses and titles of any persons in possession of the property to be sold or any part of it;
- (x) the reserve price for each separate piece of land based on a professional valuation carried out not more than 12 months prior to the proposed sale.

(2) The letter of instruction shall be in the Sale Form 1 out in the Appendix.

12. Movable other than perishable goods and livestock

(1) Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—

- (a) record the court warrant or letter of instruction in the register;
- (b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;
- (c) in writing, give to the owner of the goods seven days notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;
- (d) on expiry of the period of notice without payment and if the goods are not to be sold *in situ*, remove the goods to safe premises for auction;
- (e) ensure safe storage of the goods pending their auction;
- (f) arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the first newspaper advertisement and not later than fourteen days thereafter;
- (g) not remove any goods under the proclamation until the expiry of the grace period.

(2) If on the expiry of the period of notice, the auctioneer finds that there are other goods belonging to the judgement debtor—

- (a) which were not pointed out by the decree holder and proclaimed earlier in his proclamation; or
- (b) which have been removed by the judgment debtor, or cannot be found,

the auctioneer shall file an application in court seeking leave of the court to be allowed to attach any other movable properties of the judgement debtor pointed out by the decree holder.

[Subsidiary]

(3) An application under paragraph (2) shall be by motion by way of a miscellaneous application supported by an affidavit in a competent court, and in the case of distress for rent, repossession and attachment, may be heard *ex parte*.

(4) Where orders obtained by a judgement debtor staying execution and served on an auctioneer are subsequently vacated, the auctioneer shall—

- (a) where the warrants of attachment and sale, or letter of instruction, are still valid, proceed with execution in compliance with these Rules;
- (b) where the warrants of attachment and sale have expired, apply for extension of the warrants for a period not exceeding forty-five days, within which he shall finalize execution;
- (c) where fresh warrants of attachment and sale or letter of instructions are issued with new figures, proceed in the manner provided in these Rules in respect of a fresh warrant.

[L.N. 144/2009, r. 4.]

13. Perishable goods and livestock

Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of goods of a perishable nature or livestock—

- (a) record the court warrant or letter of instruction in the register;
- (b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item which inventory shall be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached, and where a person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;
- (c) give in Sale Form 3 to the owner of the goods seventy-two hours notice within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction:

Provided that in the case of perishable goods, no such grace period shall be necessary;

- (d) on expiry of the period of notice without payment remove the goods;
- (e) ensure safe storage of the goods pending their auction;
- (f) arrange immediate advertisement and sale.

[L.N. 144/2009, r. 6.]

14. Non-removal or alteration of attached goods

A person who removes, alters, damages, substitutes or alienates any goods comprised in the proclamation, before they are redeemed by payment in full of the amount in the court warrant, or letter of instruction, or in such lesser amount as the creditor or his advocate may agree in writing, commits an offence.

[L.N. 144/2009, r. 7.]

15. Immovable property

Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of immovable property—

- (a) record the court warrant or letter of instruction in the register;
- (b) prepare a notification of sale in the form prescribed in Sale Form 4 set out in the Second Schedule indicating the value of each property to be sold;

[Subsidiary]

- (c) locate the property and serve the notification of sale of the property on the registered owner or an adult member of his family residing or working with him or where a person refuses to sign such notification, the auctioneer shall sign a certificate to that effect;
- (d) give in writing to the owner of the property a notice of not less than forty-five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction;
- (e) on expiry of the period of notice without payment arrange sale of the property not earlier than fourteen days after the first newspaper advertisement.

[L.N. 144/2009, r. 8.]

16. Advertisement

(1) An advertisement by an auctioneer shall, in addition to any other matter required by the court, contain—

- (a) the date, time and place of the proposed sale;
- (b) the conditions of sale or where they may be obtained;
- (c) the time for viewing the property to be sold;
- (d) in respect of movable property other than perishable goods and livestock, an accurate description of the goods to be sold and a statement as to whether or not they are to be sold subject to a reserve price;
- (e) in respect of goods of a perishable nature or livestock an accurate description of the goods to be sold and of their condition and a statement as to whether or not they are to be sold subject to a reserve price;
- (f) in case of immovable property all the information required to be contained in the court warrant or letter of instruction except the amount to be recovered and the exact amount of any reserve price.

(2) Except as may be ordered by a court, advertisement by an auctioneer of a sale by auction of any property, movable or immovable, shall be by way of an advertisement in a newspaper, provided that in the case of perishable goods and livestock advertisement in a newspaper may be dispensed with if adequate notice to prospective bidders in all the circumstances can be achieved by radio or television announcement, or handbills or posters, or other means of communication.

17. Auction

(1) Subject to Order 21, rules 62, 63, 65, 66, 68 and 69 of the Civil Procedure Rules (Cap. 21, Sub. Leg.) a public auction shall take place—

- (a) of goods seized or repossessed under any contract or any written law between the hours of 10.00 a.m. and 6.00 p.m.; or
 - (b) in other sales between the hours of 10.00. a.m. and 10.00 p.m.,
- and in either event—
- (c) in a venue open to and accessible to the public, provided that it shall be lawful for an auctioneer to charge prospective bidders a reasonable sum for a sale catalogue or other list of lots for sale as a condition precedent to entry to the auction premises.

(2) The auctioneer shall make reasonable arrangements for the identification of the items for sale by list or catalogue and by the allocation of lot numbers which shall so far as possible be indicated on the goods at the time of sale.

[Subsidiary]

(3) The auctioneer shall call out each lot for auction identifying the lot number and showing to bidders the lot for sale or in the case of immovable property identifying the lot for sale by reference to a map or sketch and shall invite bids on it.

(4) The highest bidder shall be the purchaser subject to compliance with the conditions of sale.

(5) The auctioneer shall, after selling the movable property, attaching goods or goods lawfully held under this custody, and for purposes of effecting transfer in favour of the purchase, file an application to the court which issued the decree or to any other competent court which is applicable.

(6) An application under this rule shall be by motion by way of miscellaneous application, supported by an affidavit and may be heard *ex parte*.

[L.N. 144/2009, r. 9.]

18. Proceeds of sale

(1) Payment by a purchaser at a sale of seized goods shall be in form of cash, banker's cheque or electronic funds transfer.

(2) Payment by a purchaser in all other cases shall be in such forms as the auctioneer shall think fit.

(3) On receipt of the proceeds of sale the auctioneer shall issue a receipt for it and in the case of immovable property sign a memorandum of sale.

(4) The auctioneer shall remit the proceeds of sale less his charges to the court or the instructing party, as the case may be, accompanied by an itemised account in the case of movable property within fifteen days of the sale and in the case of immovable property as provided under Order 21, rule 74 of Civil Procedure Rules (Cap. 21, Sub. Leg.).

[L.N. 144/2009, r. 10.]

PART IV – ACCOUNTS**19. Maintenance of clients' account**

(1) An auctioneer shall maintain a clients' account or accounts into which he shall without delay pay all clients' money held or received by him.

(2) There may be paid into a clients' account—

- (a) money belonging to the auctioneer necessary to maintain the account;
- (b) money to replace any sum drawn from the account in contravention of these Rules; and
- (c) a cheque or draft received by the auctioneer which under paragraph 20(1)(b) he is entitled to split but does not split.

(3) An auctioneer need not pay into a clients' account held or received by him which—

- (a) is received by him in the form of cash in the ordinary course of business and is paid to a court; or
- (b) is received by him in the form of a cheque or draft and is endorsed over and delivered in the ordinary course of business to a court and is not cashed or passed through a bank account by the auctioneer.

(4) An auctioneer shall pay into a clients' account all clients' money received or held by him and which he is by these Rules permitted or required to pay in.

20. Clients' account

(1) Where an auctioneer holds or receives a cheque or draft which includes clients' money—

- (a) he may where practicable split the cheque or draft and, if he does so, he shall deal with each part of it as if he had received a separate cheque or draft in respect of that part; or
- (b) if he does not split the cheque or draft, he shall pay it into a clients' account.

(2) Money which is not clients' money but which is paid into a clients' account, other than under rule 19(2)(a) shall be paid out as soon as—

- (a) money properly required for payment to a client or a court;
- (b) money properly required for payment authorized by a court or a client;
- (c) money properly required for or towards payment of the auctioneer's charges as specified in rule 6(j);
- (d) money paid into the account in contravention of these Rules;
- (e) money paid into the account under rule 19(2)(a); and
- (f) money not being clients' money paid into the account under rule 19(2)(c).

(3) A cheque drawn upon a clients' account shall bear on its face the words "clients' account".

(4) An auctioneer shall not withdraw from a clients' account any sum in excess of the amount held for the time being in the account for the credit of the client in respect of whom the drawing is proposed to be made.

(5) No money shall be withdrawn from a clients' account under any of subparagraphs (c), (d), (e) and (f) of paragraph (1) except by a cheque drawn in favour of the auctioneer.

(6) No money shall be withdrawn from a clients' account other than in accordance with this rule.

[L.N. 144/2009, r. 11.]

22. Books of accounts

(1) An auctioneer shall keep properly maintained books of accounts showing—

- (a) every receipt of clients' money, in respect of each client;
- (b) every payment by him out of the clients' account in respect of each client;
- (c) the amount held by him for the time being in a clients' account, in respect of each client; and
- (d) the money expended for, and the costs charged to, each client.

(2) The books account referred to in subrule (1) shall include—

- (a) a cash book for office and clients' account;
- (b) a cash book and a ledger each of which shall record—
 - (i) every transaction involving clients' money, or other money dealt with by the auctioneer through a clients' account; and
 - (ii) every transaction involving the auctioneer's own money and relating to his activities as an auctioneer;
- (c) a record showing particulars of all charges levied by the auctioneer.

[Subsidiary]

(3) Subject to paragraph 2 (a) a cash book or ledger kept under this rule may be a loose-leaf book or may consist of cards or other permanent record.

(4) The details under subparagraph (2)(b)(i) and (2)(b)(ii) shall be recorded separately, either—

- (a) in separate volumes of the cash book and ledger; or
- (b) in one cash book and one ledger, each in a separate column.

[L.N. 144/2009, r. 12.]

23. Preservation of records

An auctioneer shall preserve for at least six years from the date of the last entry all books of account and accounting records.

24. Reporting of records lost or destroyed

An auctioneer shall take reasonable precautions to ensure the safety of all books of account and mechanical or electronic accounting records which he is required by rule 7 to keep and in the event of any books or records being lost, destroyed or materially damaged, shall forthwith give notice of such loss, destruction or damage to the Board, together with a written report on the circumstances of the same.

25. Accountant's certificate

Subject to these Rules an auctioneer shall every year deliver to the Board a certificate in a form approved by the Board signed by an accountant and complying with these Rules.

26. Who may not give an accountant's certificate

(1) An accountant is not qualified to give an accountant's certificate, if—

- (a) he has at any time during the accounting period but before giving the certificate, been a partner, clerk or servant of the auctioneer; or
- (b) he is subject to a notice of disqualification under subrule (2).

(2) Where the Board is satisfied that—

- (a) the accountant has been found guilty, by the disciplinary committee appointed under section 29 of the Accountants Act (Cap. 531), of professional misconduct; or
- (b) the accountant has deliberately or negligently failed to comply with this Part,

it may notify the accountant concerned in writing and on receipt of that notice the accountant shall not be qualified to give a certificate.

27. Procedure on examination of accounts

Before signing a certificate an accountant shall—

- (a) make a general test examination of the books of accounts and other mechanical or electronic accounting records of the auctioneer;
- (b) ascertain whether a clients' account is kept;
- (c) make a general test examination of the bank past books and statements kept in relation to the business of the auctioneer; and
- (d) make a comparison, as at no fewer than two dates selected by the accountant, between—
 - (i) the liabilities of the auctioneer to clients as shown by his books of accounts; and
 - (ii) the balance standing to the credit of the clients' account.

28. Dispensation of requirements of rule 25

The Board may dispense with the requirements of rule 25 if it is satisfied that an auctioneer has not held or received clients' money since the delivery by him of his last certificate or since he was licensed, whichever is the later.

29. Commencement of an accounting period

Subject to rule 30 the accounting period specified in an accountant's certificate shall—

- (a) begin at the expiry of the last preceding period accounting period for which an accountant's certificate has been delivered;
- (b) cover not less than twelve months;
- (c) terminate not more than three months before the date of delivery of the certificate to the Board; and
- (d) where possible, correspond to a period or consecutive periods for which the accounts of the auctioneer are ordinarily prepared.

30. Accounting period

(1) An accounting period shall begin on—

- (a) the date when a licence is granted to an auctioneer who has not previously held a licence; or
- (b) the date when an exemption from delivering a certificate, given to an auctioneer under rule 28 expires.

(2) An accounting period shall, when an auctioneer retires from his business and is obliged to deliver a final accountant's certificate, end on the date when he last held clients' money and may last less than twelve months.

31. Separate accounting periods

An auctioneer who has two or more places of business may adopt separate accounting periods in respect of each place of business.

PART V – DISCIPLINE**32. Form of complaint**

A complaint to the Board under section 24 of the Act shall be made by way of affidavit in Disciplinary Form 1 in the Third Schedule:

Provided that where a complaint is instigated by the Board itself, such complaint may be made on behalf of the Board by the Executive Secretary.

33. Fee for complaint

An affidavit referring a complaint to the Board shall be accompanied by such fee as may be prescribed by the Chief Justice.

34. Formal order by Board dismissing a complaint

If a complaint made to the Board is dismissed under the proviso to section 24(3) of the Act, the Board shall, if so required by the complaint or the auctioneer to whom the complaint relates, make a formal order dismissing the complaint.

35. Fixing date for hearing of a complaint

In case of a complaint against an auctioneer the Board shall fix a date for the hearing, and the Executive Secretary to the Board shall give notice of the hearing to each party to the proceedings not less than twenty-one days before the day fixed for the hearing and shall at the same time furnish each party with a copy of any affidavit from the opposing party.

[Subsidiary]

36. Notice of hearing

The notice of hearing—

- (a) shall be in Disciplinary Form 2 set out in the Third Schedule and shall, unless the Board otherwise directs, require the party to whom it is addressed to furnish to the Executive Secretary and to every other party at least fourteen days before the day fixed for the hearing, a list of all documents which he intends to rely at the hearing; and
- (b) shall set out in general terms, the charge or charges of professional misconduct made against the auctioneer, as the case may be:

Provided that the Board shall not be precluded from taking into consideration, subject to rule 45, any other charge or ground which may become apparent at the hearing and which fairly arises from the matters set out in the complaint.

37. Admission of documents

(1) A party may be notified in writing, at any time not later than nine days before the date fixed for the hearing, to call upon any other party to admit any document and if such party desires to challenge the authenticity of the document he shall within six days after service of such notice, give notice that he does not admit the document and requires it to be proved at the hearing.

(2) If a party refuses or neglects to give notice of non-admission within the time prescribed in subrule (1), he shall be deemed to have admitted the document unless the Board otherwise directs.

(3) Where a party gives notice of non-admission within the time prescribed by subrule (1), and the document is proved at the hearing, the costs of proving the documents shall be paid by the party who has challenged the document, whatever the order of the Board may be, unless in its report or order the Board finds that there were reasonable grounds for not admitting the authenticity of the document.

(4) Where a party proves a document without having given notice to admit under subrule (1) the Board may disallow the costs of proving the document.

38. Inspection of documents

A party may inspect and take copies of the documents included in the list furnished by any other party.

39. Hearing of complaints to be in public

The Board shall hear all complaints and applications in public unless the Board in its discretion otherwise decides.

40. Failure to appear at hearing

If a party fails to appear at a hearing, the Board may, in its discretion, upon proof of service on such party of the notice of hearing, proceed to hear and determine the complaint in his absence.

41. Evidence by affidavit

The Board may in its discretion, either as to the whole case or as to any particular fact or facts, proceed and act upon evidence given by affidavit.

42. Withdrawal of complaint

No complaint made under these Rules shall be withdrawn after it has been sent to the Executive Secretary, except with the leave of the Board, which may be granted, or refused, upon such terms as to costs or otherwise as the Board thinks fit.

43. Adjournment of hearing

The Board may, on its own motion, or upon the application of any party, adjourn the hearing upon such terms as to costs or otherwise as it thinks fit.

44. Consolidation of proceedings

The Board may, after giving the parties concerned an opportunity to be heard, order the consolidation of the hearing of any proceedings before it.

45. Amendment of complaints

If, in the course of a hearing, it appears to the Board that the charges of which notice has been given require to be amended or added to, the Board may make or permit such amendment or addition, and the filing of such further affidavit, as it thinks fit, or, if in the opinion of the Board such amendment or addition is not within the scope of the complaint may require the same to be embodied in a further complaint, provided that if such amendment or addition, is, in the opinion of the Board such as to take any party by surprise, or prejudice the conduct of his case, the Board shall grant an adjournment of the hearing upon such terms as to costs or otherwise as the Board thinks fit.

46. Power to award costs

Upon the hearing or determination of a complaint against the auctioneer the Board may, without finding any professional misconduct proved against the auctioneer nevertheless order any party to pay the costs of proceedings having regard to his conduct and to all the circumstances of the case.

47. Record of proceedings before the Board

The Executive Secretary of the Board shall keep a record of all proceedings before the Board.

48. Inspection of record of proceedings

A party to proceedings before the Board shall be entitled to inspect the record or transcript of it and a party entitled to be heard in an appeal filed from such proceedings shall be entitled to be supplied with a copy of a transcript of such proceedings against payment, if so ordered by the Board, of copying charges at such reasonable rate as the Board may direct.

49. Service of notice or document

Service of a notice or document may be effected under these Rules by any method authorized by law or by registered post, addressed to the last known postal address or abode in Kenya of the person to be served, and such service shall be deemed to have been effected seven days after posting.

50. Discretion of the Board to dispense with the requirement of these Rules

The Board may dispense with any requirements of these Rules respecting notices, affidavits, documents, service or time, in any case where it appears to the Board to be just or expedient so to do.

51. Extension of time

The Board may extend the time for doing anything under these Rules on such terms as to costs or otherwise as the Board thinks fit.

[Subsidiary]

52. Witness summons

A witness summons issued under section 4 of the Act shall be in Discipline Form 3 set out in the Third Schedule.

53. Non-compliance with the Rules by an auctioneer

An auctioneer who fails to comply with any of these Rules without lawful excuse commits an offence.

54. Penalty

A person who commits an offence under these Rules for which no other penalty is prescribed shall be liable to a fine of fifty thousand shillings and to imprisonment for a term of 1 year.

55. Fees and disbursements payable to an auctioneer

(1) Except as may be provided by any other written law or by contract the fees set out in the Fourth Schedule payable to the auctioneer for the attachment, repossession and sale of movable and immovable property under court warrants or letters of instructions shall be charged in accordance with these Rules.

(2) Where a dispute arises as to the amount of fees payable to an auctioneer—

- (a) in proceedings before the High Court; or
- (b) where the value of the property attached or repossessed would bring any proceedings in connection with it within the monetary jurisdiction of the High Court,

a registrar, as defined in the Civil Procedure Rules (Cap. 21, Sub. Leg.), may on the application of any party to the dispute assess the fee payable.

(3) In any other case where a dispute arises as to the amount of fees payable to an auctioneer a magistrate or the Board may, on the application of any party to the dispute, assess the fees payable.

(4) An appeal from a decision of a registrar or a magistrate or the Board under subrules (2) and (3) shall be to a judge in chambers.

(5) The memorandum of appeal, by way of chamber summons setting out the grounds of the appeal, shall be filed within 7 days of the decision of the registrar or magistrate.

FIRST SCHEDULE

LICENSING FORM 1

(r. 3)

[L.N. 144/2009, r. 13.]

APPLICATION FOR GRANT OF LICENCE

Note.—To be submitted in duplicate to the Chairman, the Auctioneers Licensing Board, P.O. Box 30041, Nairobi.

AFFIX YOUR PASSPORT SIZE PHOTOGRAPH HERE

PART ONE

- 1. Name of the applicant: (surname)
- Other names in full
- 2. Identity card number
- 3. Date of birth

FIRST SCHEDULE, LICENSING FORM—continued

- 4. Nationality or citizenship
- 5. Place of business in respect of which licence is to be granted:
- 6. Postal address:
- 7. District or districts where licence to apply
- Area where applicant is resident:
- Name of the area chief:
- 8. Name of the bank:
- Account number

PART TWO

- 9. Have you ever been convicted of a criminal offence? If so state the charge(s)
- 10. Have you ever been convicted of an offence under the Auctioneer’s Act, or the former Court Brokers Act?
- 11. State the name and address of your current employer
- State your designation
- 12. Are you a practising advocate, local councillor or member of Parliament?
- 13. Have you ever been declared bankrupt?

PART THREE

- 14. (i) Secondary schools attended:
- (ii) Qualification attained in secondary school
- (iii) Any further training:
- (iv) Qualifications attained:
- 15. How long have you been an auctioneer?
- 16. Do you hold other business licences? If so, give details:

PART FOUR

- 17. The application must be accompanied by the following—
 - (a) an application fee of KSh. 1,000;
 - (b) (i) a current certificate of good conduct from the Criminal Investigations Department obtained at least five months prior to the application;
 - (ii) a recommendation in Licensing Form 2 from the area magistrate and the Auctioneer under whom the applicant has had experience for the two (2) years preceding the application;
 - (iii) a recommendation in Licensing Form 3 from either a religious leader or a location chief of the area of the applicants residence or an advocate of 10 years standing;
 - (c) evidence that the applicant has Form (4) “O” Level passes including a pass in English and mathematics;
 - (d) evidence that the applicant has available to him secure premises acceptable to the Board, sufficient to store and auction goods;
 - (e) evidence that the applicant has insured his premises against burglary, fire and theft for a minimum sum of five hundred thousand shillings;

Auctioneers

[Subsidiary]

FIRST SCHEDULE, LICENSING FORM 1—continued

- (f) a cash deposit of one hundred thousand shillings or a guarantee of one hundred thousand shillings from a bank or insurance company properly executed and approved by the Board for the due performance by the auctioneer of his duties and obligations under the Act and these Rules valid for three (3) years from the proposed date of commencement of the licence applied for;
- 18. Evidence that the applicant has a working knowledge of the rules applicable to Auctioneering and attachment and sale of property with a minimum of two (2) years experience with a reputable firm of auctioneers.
- 19. Your attention is drawn to the provisions of section 9(3) of the Auctioneers Act which reads; "A person who knowingly makes a false statement in connection with an application for the grant, renewal or amendment of licence commits an offence."
- 20. Pursuant to rule 3 of the Auctioneers Rules, I hereby nominate—

(a) Name I accept this nomination:
 Address

Signature of nominee

(b) Name: I accept this nomination:
 Address:

Signature of nominee

to wind up my Auctioneering business in the event that I die or otherwise lose my licence.

DECLARATION

I declare that the information given is true in all respects.

Signature

Date

LICENSING FORM 2

(r. 3(b)(ii))

FORM FOR RECOMMENDATION FOR AN AUCTIONEER'S LICENCE

PART ONE

(To be filled by area magistrate I/C)

- 1. Name of magistrate:
- 2. Designation:
- 3. Station:
- 4. Postal address:
- 5. Name of person recommended:
- 6. State nature of relationship:
- 7. State how long you have known the applicant:
- 8. State any dealings that the applicant may have had with your court:
- 9. State reasons why you consider the applicant suitable for an auctioneer's licence:

Auctioneers

[Subsidiary]

FIRST SCHEDULE, LICENSING FORM 2—continued

DECLARATION

I declare that the information I have given herein is true.

Signature Stamp

Date:

PART TWO

(To be filled by auctioneer under whom the applicant has had experience)

1. Name:
2. Postal address:
3. Physical address:
4. Category of licence:
5. Area of jurisdiction:
6. Name of person recommended:
7. How long has the applicant worked with your establishment?
.....
8. State positions work
9. State reasons why you consider the applicant suitable for an auctioneer's licence:
10. State the name of any other auctioneer you have recommended:
.....
.....

DECLARATION

I declare that the information I have given herein is true.

Signature Stamp

Date

LICENSING FORM 3

(r. 3(b)(iii))

FORM OF RECOMMENDATION FOR AN AUCTIONEER'S LICENCE

(To be filled by a chief or religious leader or advocate)

1. Name of referee:
2. Postal address:
3. Physical address:
4. Occupation:
5. Location/area covered:
6. Employer:
7. If advocate, state period you have practised:
8. Name of person recommended:
9. State nature of relationship:
10. State how long you have known the applicant:
11. State period of residence in your area or membership to your religious organization:
12. State reason why you consider the person recommended suitable for an auctioneer's licence: ...
.....

Auctioneers

[Subsidiary]

FIRST SCHEDULE, LICENSING FORM 3—continued

13. State the name of any other auctioneer you have recommended:

DECLARATION

I declare that the applicant is morally fit to be an auctioneer and that the information I have given herein is true.

..... Stamp

Signature

Date

SECOND SCHEDULE

[Rules 5, 11(2).]

SALE FORMS

SALE FORM 1

LETTER OF INSTRUCTION

Date

To: Name and address of auctioneer:

.....

1. Name and address of instructing party:

2. Name and address of instructing advocate:

3. (a) Name and address of property owner:

(b) Name and address of principal debtor:

4. (a) Physical address of property to be seized/repossessed* and sold as per annexure:

(b) Person to point out locality and property:

(c) Legal description of property to be seized/repossessed* and sold:

5. Statutory provisions under which seizure/repossessed* and sale is authorised:

6. (a) Amount to be recovered as at date of letter of instruction: KSh.

(b) Daily rates thereafter (interest/rent/storage*): KSh.

7. Additional charges to be recovered:

(a) estimated legal cost: KSh.

(b) estimated Auctioneers fees: KSh.

8. Reserve prices or reasons for selling without reserve:

.....

.....

Auctioneers

[Subsidiary]

SECOND SCHEDULE, SALE FORM 1 —continued

- 9. Advertising instruction/expense authorized:
.....
.....
- 10. We the instructing party or its advocate on its behalf hereby:
 - (i) confirm that all statutory conditions precedent to seizure/repossession* and sale have been complied with;
 - (ii) request you to sell the property described in paragraph 4 by public auction at the best price obtainable subject to the reserve prices indicated in paragraph 8;*
 - (iii) hereby agree to indemnify you against all costs, damage, losses and expenses you may incur in the lawful exercise of your duties as a licensed auctioneer;
 - (iv) agree to pay your charges as per fees already agreed*/as specified in the Auctioneers Rules.

.....
Signature of instructing party or its advocate

Note. In some cases such as income tax or value added tax distraint and in the event of objection proceedings or applications for a stay, extra penalties/interest/storage and other charges may be incurred and may require payment in advance.

SALE FORM 2

(Rules 12 and 13)

[Corr. No. 84/1997, L.N. 144/2009, r. 14.]

PROCLAMATION OF ATTACHMENT/REPOSSESSION/DISTRAINT OF MOVABLE PROPERTY

- 1. Auctioneer's name Tel.
P.O. Box trading as
Building Floor Street
- 2. Creditor's name and address
- 3. Debtor's name and address
- 4. *In court at
- 5. *Case number date of decree
- 6. Date of return to court/creditor*
- 7. Warrant or letter of instructions dated was given by above-mentioned court/creditor* and you are hereby notified that the movable property described in the schedule hereto is hereby duly attached/repossessed/distrained* and left in your custody for seven (7) days from today. At the expiry of seven (7) days from this proclamation the same will be removed to the auctioneers premises and sold by public auction (or in the case of property under hire purchase may be sold by private treaty) unless the amount due together with costs of this attachment/repossession/d distraint* as specified overleaf shall in the meantime have been paid.

SCHEDULE OF MOVABLE PROPERTY

| <i>Description</i> | <i>Condition</i> | <i>Value</i> |
|--------------------|------------------|--------------|
|--------------------|------------------|--------------|

Signature *Judgement*
 Auctioneer
 Witness if any
 Dated

Auctioneers

[Subsidiary]

SECOND SCHEDULE, SALE FORM 2—continued

| | |
|---|----------------|
| | <i>KSh.</i> |
| Receipt of court warrant or letter of instruction | 500 |
| If property less than KSh. 2,000 found | 2,000 |
| Fees on attachment/repossession/distrain* | |
| | <i>Percent</i> |
| KSh. 2,000 to KSh. 50,000 | 5% |
| KSh. 50,000 to KSh. 100,000 | 3% |
| Over KSh. 100,000 | 15% |

TOTAL AUCTIONEERS CHARGES

Add estimated charges for:

| | |
|---------------------------|-------|
| Transport | |
| Storage | |
| Advertising | |
| Insurance | |
| Other disbursements | |

Fees on sale:

| | |
|---------------------------------|----------------|
| | <i>Percent</i> |
| First KSh. 2,000 | 5% |
| KSh. 2,001 to KSh. 10,000 | 3% |
| Over KSh. 10,000 | 1% |

Date Signature of auctioneer

Date Signature of debtor

This form must be signed on both sides by the auctioneer and the debtor.

SALE FORM 3

(R. 12(c))

NOTIFICATION OF SALE OF MOVABLE PROPERTY

1. Auctioneer's name
 - Trading as
 - P.O. Box Tel.
 2. Creditors name and address
 3. Debtor's name and address
 4. Date of letter of instruction
 5. *In court at
 6. *Case number date of decree
 7. TAKE NOTICE that the goods listed below have been removed to my auction room and will be sold by public auction at:
 Date Time Place
- unless the amount claimed by the creditors plus the auctioneers charges set out overleaf are paid prior to the auction. The conditions of sale are those set forth in Form 27, Appendix D, Civil Procedure Rules and read with section 28 of the Auctioneers Act.

Auctioneers

[Subsidiary]

SECOND SCHEDULE, SALE FORM 3—continued

SCHEDULE OF MOVABLE PROPERTY REMOVED

Description Condition Value

Signature: Judgment debtor/agent
Auctioneer
Witness if any
Dated

Note—The date of the sale may not be earlier than seven (7) clear days after the date of this form and will be stopped at any time before the fall of the hammer if the amount due plus the costs overleaf are paid to the auctioneer or the creditor.

SALE FORM 4

NOTIFICATION OF SALE

- 1. Auctioneers
Name Tel:
P.O. Box trading as
Building floor street
2. Creditor's name and address
Name
Address
3. Debtor's name and address:
Name
Address
4. * In court at
5. * Case number date of decree
6. Date of return to court/creditor.*
7. Warrant or letter of instructions dated

was given by the above mentioned court/creditor* and you are hereby notified that the immovable property described in the schedule hereto is hereby duly scheduled for sale. At the expiry of forty five (45) days from the date of this Notification the same will be sold by public Auction not earlier than fourteen days after the first newspaper advertisement unless the amount due KSh together with costs of this Notification shall be in the mean time have been paid.

THIRD SCHEDULE

DISCIPLINE FORM 1

(r. 32)

COMPLAINT AGAINST AN AUCTIONEER

(Before the Auctioneers Licensing Board established under the Auctioneers Act)

MISCELLANEOUS CAUSE NUMBER OF 20
In the Matter of an Auctioneer
and
In the Matter of the Auctioneers Act.
To the secretary of the Auctioneer's Licensing Board.

Auctioneers

[Subsidiary]

THIRD SCHEDULE, DISCIPLINE FORM 1—continued

- (I)* of
 make oath and say as follows—
1. I make a complaint, on the grounds set out below, against the conduct of†
 of
 an Auctioneer.
 2. (Here state the facts and give concise details of the complaint in numbered paragraphs and show deponent's means of knowledge. Annex the originals (where possible of any documents necessary as exhibits).

Sworn by the said

 at this
 day of
, 20

Before me,

 Commissioner of Oaths or Magistrate

NOTES

- * Insert full name: address and description of complainant.
- † Insert full name and last known postal address of auctioneer.

DISCIPLINE FORM 2

(Rule 36)

NOTICE OF HEARING

(Before the Auctioneers Licensing Board established under the Auctioneers Act)

DISCIPLINARY CASE NUMBER OF 20

In the matter of

*
 and

In the matter of the Auctioneers Act

To
 of

NOTICE is hereby given THAT—

1. A complaint against you under section 19 of the Auctioneers Act, has been made by

 to the Auctioneers Licensing Board.

Auctioneers

[Subsidiary]

THIRD SCHEDULE, DISCIPLINE FORM 3—continued

aforesaid
 (specify documents to be produced)

Given under my hand at Nairobi this
 day of, 20

.....
*Executive Secretary,
 Auctioneers Licencing Board*

To

FOURTH SCHEDULE
 [L.N. 144, r. 15]

FEES PAYABLE UNDER THE ACT

PART I – FEES PAYABLE TO THE BOARD

| | <i>KSh.</i> |
|---|-------------|
| 1. Application for a licence (all classes) | 1,000.00 |
| 2. Application for renewal of a licence | 500.00 |
| 3. Issue of a licence— class A | 5,000.00 |
| — class B | 7,500.00 |
| — special | 2,000.00 |
| 4. Amendment of a licence | 1,000.00 |
| 5. Issue of a copy of a licence | 1,000.00 |
| 6. Inspection of the register | 100.00 |
| 7. Issue, renewal, amendment or replacement of an Identification Card | 1,000.00 |
| Filing of a complaint with the Board | 500.00 |

PART II – AUCTIONEERS' CHARGES

| | |
|---|---------------|
| 1. Receipt of court warrant or letter of instructions | KSh. 1,000.00 |
| 2. Where no property is found to attach or where the property found is worth KSh. 4,000 or less | KSh. 4,000.00 |
| 3. Fees before attachment or repossession | KSh. 4,000.00 |
| 4. Fees on attachment/repossession/dstraint and expenses | |
| KSh. 4,001 to KSh. 100,000.00 | 10% |
| KSh. 100,001 to KSh. 1,000,000 | 5% |
| Over KSh. 1,000,000 | 2% |

Auctioneers

[Subsidiary]

FOURTH SCHEDULE—*continued*

| | |
|---|--|
| Transport, storage, advertising, insurance and other disbursements expenses, where attachment or repossession is stayed or postponed or money tendered after attachment or repossession but before sale | Attaching or repossession charges in addition to expenses. |
| 5. Fees on sale of movable property | |
| First KSh. 100,000 | 10% |
| Over KSh. 100,000 | 7% |
| Storage of property | ¼% of value of property, subject to KSh. 500 per day. |
| 6. Fees on sale of immovable property | |
| Filing possession of property | KSh. 4,000.00 |
| Sale of immovable property—charge shall be based upon the amount realized at the sale | |
| KSh. 0 to 600,000 | 10% |
| KSh. 600,001 to 3,000,000 | 5% |
| Over KSh. 3,000,000 | 2% |
| 7. Where requisite notices are served and sale is stayed, or postponed | ½ of fees to which auctioneer would have been entitled to after sale, plus expenses. |
| 8. Attachment and sale of livestock | 10% of the amount realized at the sale plus reasonable expenses. |
| 9. Eviction of person in possession of premises in execution of a court order | |
| (a) On premises of 15 square metres in area or less of internal area | 5,000 |
| (b) On premises of more than 15 square metres in area or less | 10,000 |
| (c) On agricultural premises | 15,000 |
| (d) On premises of more than 5,000 square metres | 20,000 |
| 10. For taking inventory of transporting movable property and for advertising and insuring movable and immovable property the auctioneer shall be paid such amount as the court may consider reasonable. | |
| 11. Travelling expenses as published by the Automobile Association from time shall to time be allowed at three times the scale. | |
| 12. The court may increase the fees allowed under this Schedule, having regard to the complexity of the work required to be done, the skill, specialized knowledge and labour expended by the auctioneer. | |

AUCTIONEERS (PRACTICE) RULES, 2009

[L.N. 143/2009.]

1. These Rules may be cited as the Auctioneers (Practice) Rules, 2009.
2. (1) These Rules shall apply to and bind all auctioneers.
(2) Every practising auctioneer shall sign, subscribe to and bind themselves to them upon registration.
3. No auctioneer shall hold out or allow himself to be held out, directly or indirectly, and whether or not by name, as being prepared to do professional business at less than the scales laid down by the Auctioneers Fee Schedule for the time being in force.
4. No auctioneer shall agree to share with any person, not being an auctioneer or other fully qualified agent practising in the country, his costs in respect of any business:
Provided that—
 - (a) an auctioneer carrying on practice on his own account may agree to pay an annuity or other sum out of profits to a retired partner or predecessor or the dependant or legal personal representatives of a deceased partner or predecessor; and
 - (b) an auctioneer may agree in consideration of a salary to be employed by an Auctioneer.
5. No auctioneer employed by an unqualified person shall execute instructions within the scope of his licence or render services to his employer for which fees are charged directly or indirectly by his employer from any other person and retained by that employer.
6. All auctioneers shall execute all instructions with decorum while abiding by the Act and rules made thereunder.
7. No auctioneer shall, by way of paying court fees or any sort of consideration, be it monetary, material or otherwise, influence the issue of any instructions whatsoever to himself.
8. No auctioneer shall execute instructions explicitly directed to another auctioneer unless the instructing party and the auctioneer to whom the instructions are directed formally amend and countersign the said instructions in the name of the auctioneer whom they wish to execute those instructions.
9. Auctioneers shall ensure that they attain the best value for goods sold at auctions conducted in execution of instructions given under the Act.
10. (1) Every auctioneer shall be a member of a registered auctioneers' association and shall pay the requisite entry and annual subscription stipulated in the constitution of the association.
(2) A licence to an auctioneer shall be issued by the Auctioneers Licensing Board subject to production of proof of payment of the annual subscription fee to the association referred to in subregulation (1) for the year for which the license is applied.
(3) All auctioneers shall be expected to attend a minimum number of workshops, seminars or training programmes as set out and called by the Auctioneers Licensing Board in conjunction with the association.

