

CHAPTER 526

THE AUCTIONEERS ACT

SUBSIDIARY LEGISLATION

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[Legal Notice 120 of 1997, Legal Notice 144 of 2009, Legal Notice 267 of 2017]

PART I – PRELIMINARY

1. Citation

These Rules may be cited as the Auctioneers Rules.

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.

(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;

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- (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 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

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- (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 reserves 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;
 - (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) an 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.

(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

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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;
- (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.

(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 22, rule 70 of Civil Procedure Rules (Cap. 21, Sub. Leg.).

[L.N. 144/2009, r. 10, L.N. 267/2017, r. 2.]

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;

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- (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.

(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

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- (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.

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.

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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.

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

FORMS

[L.N. 11/2009, r. 13.]

LICENSING FORM 1 (r. 3)
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
4. Nationality or citizenship

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- 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 practicing advocate, local councilor or member of Parliament?
- 13. Have you ever been declared bankrupt?

PART THREE

- (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 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;
 - (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

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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(2)(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:

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)

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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(2)(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 practiced:
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:
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

[rr. 5 & 11(2)]

SALE FORMS

[L.N. 120/1997, L.N. 144/2009.]

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:

(a) Name and address of property owner:

(b) Name and address of principal debtor:

(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 authorized:

.....

(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:.....

9. Advertising instruction/expenditure 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 obtained 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.

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[Subsidiary]

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 (r. 12 and 13)

(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.

SCHEDULE OF MOVABLE PROPERTY

Table with 3 columns: Description, Condition, Value. Rows include Receipt of court warrant or letter of instruction (500 KSh), Fees on attachment/repossession/d distraint* (2,000 KSh), and various percentage rates (5%, 3%, 15%) based on value ranges.

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Insurance

Other disbursements

Fees on sale:

| | |
|---------------------------|-----------------|
| | <i>Per cent</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.

SCHEDULE OF MOVABLE PROPERTY REMOVED

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

Auctioneers

[Subsidiary]

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

[r. 32]

FORMS

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.

(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

Auctioneers

[Subsidiary]

....., 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 (r. 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.
2. The hearing of the said complaint will take place on the day of 20at o'clock in the noon at

If you fail to appear the Board may proceed with the hearing in your absence.

3. A copy of the affidavit of the complainant is attached hereto.

The allegations against you are, in substance, as set out below but these are intended merely as a guide and the Board may take into consideration any other allegation against you which may become apparent at the hearing and which fairly arises from the facts set out in the said affidavit.

4. The powers and procedures of the Board are regulated by the Auctioneers Act and the Auctioneers Rules. In particular your attention is drawn to—

- (a) the necessity of supplying to me and to all parties noted hereon, at least fourteen days before the hearing date, a list of all documents on which it is proposed to rely at the hearing; and
- (b) the right of any party to these proceedings to inspect and take copies of documents so listed.

Dated the, 20

Copy to:

.....

Executive Secretary

Complainant

Auctioneers

[Subsidiary]

Applicant

Your attention is directed to paragraph 4 of the foregoing notice for your compliance as may be necessary.

.....
Executive Secretary,
Auctioneer’s Licencing Board

Note:

* Insert the full names of the auctioneer.

DISCIPLINE FORM 3 _____ (r. 52)

WITNESS SUMMONS

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

DISCIPLINARY CASE NUMBER OF 20

In the matter of an Auctioneer

and

In the matter of the Auctioneers Act,

You are required to attend before the Auctioneers Licencing Board at on day of 20..... hour of in the noon, and so from day to day until the above matter is disposed of, to give evidence on behalf of and also to bring with you and to produce at the time and place aforesaid

(specify documents to be produced)

Given under my hand at Nairobi this day of, 20

Executive Secretary,
Auctioneers Licencing Board

To

.....
.....

FOURTH SCHEDULE
FEES PAYABLE UNDER THE ACT

[L.N. 144/2009, r. 15.]

PART I - FEES PAYABLE TO THE BOARD

- | | | |
|----|--|-------------|
| | | <i>KSh.</i> |
| 1. | Application for a licence (all classes) | 1,000.00 |

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| | | |
|----|--|----------|
| 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/distrain 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% |
| | Transport, storage, advertising, insurance and other disbursements | Attaching or repossession charges in addition to expenses. |
| | expenses, where attachment or repossession is stayed or postponed or money tendered after attachment or repossession but before sale | |
| 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, |

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[Subsidiary]

| | | |
|-----|--|--|
| | | 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. | |

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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.
-

THE AUCTIONEERS (PRACTICE) RULES

[Legal Notice 143 of 2009]

1. These Rules may be cited as the Auctioneers (Practice) Rules.
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.