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REPUBLIC OF KENYA




Report of the
Task Force on the Laws
Relating to
Auctioneers and Brokers

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Report of the Task Force on the Laws Relating to Auctioneers and Brokers

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The Report of the
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NAIROBI.
26th May, 1995

The Honourable Amos S. Wako, E.B.S., E.G.H., M.P.,
The Attorney-General,
Attorney-General's Chambers,
NAIROBI.

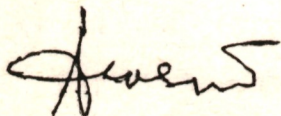
Dear Mr. Attorney-General,

**TASK FORCE TO REVIEW LAWS RELATING TO AUCTIONEERS
AND BROKERS**

Pursuant to our appointment to the Task Force by Gazette Notice Number 6769 of 9th December, 1993, we have carried out and completed the task in accordance with the provisions of the said Gazette Notice and have made other recommendations which we think are best dealt with as part of this Report.

We have the honour to submit our Report to you:—given the urgency of the task, there are doubtless errors and omissions in our drafting for which we accept responsibility.

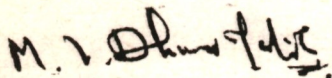
Yours faithfully,



MR. JUSTICE S. E. O. BOSIRE,
Chairman.



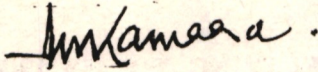
MR. J. Ole KIPURY,
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MR. M. Z. A. MALIK,
Member.



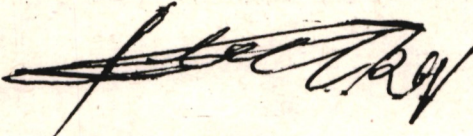
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Member.



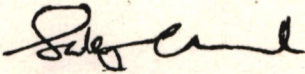
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MR. A. S. JENEBY,
Member.



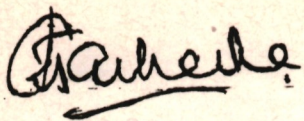
MR. Z. K. CHERUIYOT,
Member.



MRS. SALLY CHURCH,
Member.



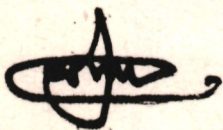
MR. W. MUKURIA,
Member.



MISS JEANNE GACHECHE,
Member.



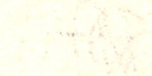
MRS. J. LESIT,
Joint Secretary.



MRS. H. M. OKWENGU,
Joint Secretary.

1800

THE UNIVERSITY OF CHICAGO



PHYSICS DEPARTMENT



PHYSICS DEPARTMENT

INTRODUCTION

1. We were appointed on the 9th day of December, 1993 by Gazette Notice Number 6769 with the following terms of reference:

- (a) To examine and review the Auctioneers Act (Cap. 526), The Brokers Act (Cap. 527) and the Court Brokers Act (Cap. 20) and consider the desirability or otherwise of consolidating the laws related thereto.
- (b) To make recommendation on provisions to be made under law in respect of the following matters—
 - (i) minimum legal requirement for eligibility for carrying on Auctioneers' and/or Brokers' business;
 - (ii) procedures for the licensing, monitoring and disciplining of Auctioneers and Brokers; and
 - (iii) rules and regulations relating to possessions, evictions and auction sales including the scale of charges.
- (c) To make recommendations on such other matters which are related or incidental to the foregoing.

2. The Task Force on being appointed, and at its first meeting, decided that in order to speed up its work, it would be convenient and more practical for the Task Force to split up into various Committees as follows:

- (i) Technical Committee—Headed by the Honourable Mr. Justice S. E. O. Bosire.
- (ii) The Implementation Committee—Headed by Mr. J. Ole Kipury.
- (iii) The Licensing Committee—Headed by Mrs. Sally Church

The Task Force was officially launched in Nairobi on 15th February, 1994 by the Honourable the Attorney-General.

3. The Task Force decided to send out questionnaires for distribution to certain organizations, representative bodies and individuals, inviting replies to the questions set out therein connected with the existing law relating to Auctioneers and Brokers and suggestions for the areas of improvement.

Copies of the questionnaires appear as Appendix I to this Report.

The questionnaires were sent out to:

- (a) Licensing Authorities.
- (b) Financial Institutions and Lawyers.
- (c) Repossessors, Auctioneers and Investigators.

The questionnaires were distributed through mail and all other convenient methods.

4. Most of the representative bodies and organizations not only responded to the questionnaires, but also appeared before the meetings of the Task Force to present their views and suggestions. Regrettably, one organization whose reply to the questionnaire and appearance at the meetings of the Task Force and whose views would have been most useful and of immense assistance to the Task Force, not only did not respond to the questionnaire, but did not appear to present its views at the meeting convened for this purpose of the Task Force. The organization is the Law Society of Kenya.

5. The Task Force also decided apart from the questionnaires to invite views from the Members of the Public, both in writing and at its meetings. As a result of the Press and radio publicity, the Task Force received memoranda from Members of the Public which were studied and analyzed.

6. The Task Force held public meetings to receive memoranda and oral submissions at the following places:

- (a) Mombasa—10th May, 1994 to 13th May, 1994.
- (b) Nyeri—23rd and 24th May, 1994.
- (c) Embu—25th May, 1994.
- (d) Meru—26th May, 1994.
- (e) Kisumu—13th and 14th June, 1994.
- (f) Kakamega—15th and 16th June, 1994.
- (g) Nakuru—4th and 5th July, 1994.
- (h) Eldoret—6th and 7th July, 1994.
- (i) Nairobi—25th, 26th, 27th, 28th, 29th July, 1994 and 3rd August, 1994.

7. The object of these meetings was to enable Members of the Public to make oral submissions. We felt that this was an essential part of our task since large numbers of the population were incapable of submitting written memoranda. The attendance in the various centres we attended varied, but in all, we were addressed by approximately 1,810 people. Many of the persons who were present at the various centres were Members of the Public, Provincial Administration, Auctioneers, Court Brokers, Kenya Police, Judiciary and Advocates. In meetings in centres other than Nairobi, High Court Judges, Chambers of Commerce, Financial Institutions, businessmen, Members of Insurance Industry all addressed us. The views expressed did not vary considerably as all who presented their views orally or by memoranda were of the view and opinion that the work carried out by

Court Brokers at present is most unsatisfactory and firm legislation must be introduced to regularize and control their activities.

8. The Task Force after the public meetings at the various centres within the Republic of Kenya came away with the clear impression that the public at large is thoroughly dissatisfied with the work and the methods of work of Court Brokers and Auctioneers. The principal areas of dissatisfaction were:

- (i) dishonesty among Court Brokers and Auctioneers;
- (ii) failure to comply with the statutory rules;
- (iii) inadequate supervision of Court Brokers and Auctioneers;
- (iv) overcharging;
- (v) under selling especially to friends, relatives and contacts or in collusion with the creditor;
- (vi) failure to account to the Court;
- (vii) failure to keep proper books of account;
- (viii) loss of or damage to attached property;
- (ix) mistreating Advocates, decree holders, judgment debtors or third parties;
- (x) the inaccessibility of the Auctioneers Licensing Board to the Members of the Public;
- (xi) lack of security and protection of Court Brokers and Auctioneers when carrying out their duties.

9. The Technical Committee held a total of 11 meetings during the year.

10. The Implementation Committee held a total of 5 meetings during the year.

11. The Licensing Committee held a total of 3 meetings during the year.

12. The Task Force from 6th January, 1994 to 24th January, 1995, apart from the meetings at the various centres within the Republic of Kenya set out above, met 16 times in Nairobi.

13. From the representations made to the Task Force during its meetings when Members of the Public or professionals were present and from the Memoranda received, it was obvious that more stringent control is needed to cover the qualifications and activities of not only Court Brokers, but also of auctioneers, repossessioners and bailiffs: in effect, all persons who sell the property of others by auction either consensually or by force of law.

Recommendation Number 1:

14. After exhaustive analysis of the written memoranda received and of the views presented to the Task Force, the Task Force recommends that the Auctioneers Act (Chapter 526) and the Court Brokers Act (Chapter 20) be repealed, and a new Act to be known as the Auctioneers Act replaces these two Acts. A draft of the proposed new Act and the Rules thereunder is appended to this report.

GENERAL POLICY CONSIDERATIONS

15. After we had completed our public meetings and after analyzing the written and oral submissions we received, we met to consider the general principles which should guide us in framing our recommendations.

16. We decided, in the first place, that any new law we recommend should be as simple as possible and should aim at ensuring that Auctioneers—whom we would define for this report as anyone who auctions the property of others either with their consent or by force of law—are persons of good character, sound education and proven honesty.

17. However, we accept that Kenya is a country of many races, tribes, communities and religions, whose customs and beliefs are deep rooted and varied: any changes should offend such customs and beliefs as little as possible.

18. (1) We thought the new law should be as simple as possible but should embrace all those practising as Auctioneers as defined above. One area to which our terms of reference did not expressly extend was auctions held by the Customs and Excise Department. There are many complaints about these auctions, but section 227 Customs and Excise Act (Cap. 472) states:

“227. Where any goods are sold under this Act, then the provisions of any other legislation relating to Auctioneers shall not apply to such sale”.

We can make no specific recommendation in relation to that section but we can point out that it would be consistent with our general approach and our other recommendations that this Section would be turned around the other way, and that the new Auctioneers Act should apply to such sales. This can be achieved very simply by deleting the word “NOT” which we have underlined when quoting the Section.

(2) We did receive complaints that sales by auction of surplus Government property especially of vehicles were by no means always conducted fairly or properly as a result of which it seems to us likely that Government is suffering a considerable loss of revenue. We hope that in future if “licensed Auctioneers” as we define them conduct such sales this loss of revenue will be stopped.

19. We received representations that there should be boards for the licensing of Auctioneers at the district or provincial level.

Recommendation Number 2:

20. After due consideration we recommend that a Central Auctioneers Licensing Board be established with regional representation. Our thinking is that a central board will provide greater expertise, greater consistency and greater efficiency with less expense from a proliferation of district boards.

THE EXISTING LAW

Our terms of reference referred us specifically to:

1. The Court Brokers Act (Cap. 20).
2. The Auctioneers Act (Cap. 526).
3. The Brokers Act (Cap. 527).

We have considered the Brokers Act (Chapter 527). This Act despite its misleading name, applies to brokers—who are not defined—and to money changers, goldsmiths and silversmiths. Clearly our terms of reference did not truly have in mind those last three occupations. Section 3 and 4 of the Act are the only sections which refer to brokers at all. Section 4 (1) divides them into two classes: “ordinary brokers” and “official brokers”. We made inquiries of several Auctioneers as to what functions were carried out by “official brokers” but none of them could give us an answer. It seems to us likely that the reference to “brokers” in Cap. 527 is anachronistic and should be deleted: the reference to “money-changer” would seem to fall more properly within the ambit of the Central Bank of Kenya. Our informal inquiries among goldsmiths and silversmiths indicate that they are licensed under the Trading in Unwrought Precious Metals Act (Chapter 309). There is a case to be made for repealing the Brokers Act (Chapter 527) as an anachronism subject to any comments by the Commissioner of Mines.

In addition to the foregoing, we have had to look somewhat more widely to find the legislation authorizing the sale of the property of others by force of law. We have accordingly borne in mind the provisions of:

- The Civil Procedure Act (Cap. 21).
- The Law of Contract Act (Cap. 23).
- The Chattels Transfer Act (Cap. 28).
- The Disposal of Uncollected Goods Act (Cap. 38).
- The Registration of Titles Act (Cap. 281).
- The Distress for Rent Act (Cap. 293).
- The Registered Land Act (Cap. 300).
- The Agricultural Finance Act (Cap. 323).
- The Income Tax Act (Cap. 470).
- The Hire Purchase Act (Cap 507).
- The Indian Transfer of Property Act as applied to Kenya.
- The Pawnbrokers Act (Cap. 529).
- Value Added Tax Act (Cap. 476 (Rev.)).

Additionally, we have borne in mind that many transactions start by agreement of the parties. For example, the incorporation of a company or the creation of a debenture by a company in favour of a bank or other lender. In most of these very common transactions no problems arise, but there are times when a liquidator or a receiver is appointed and while that appointee's relationship with the auctioneer is entirely consensual, nevertheless, the auctioneer is in a situation where he is perceived by the original investor as selling the property of another by force of law.

AUCTIONEERS BILL, 1995
ARRANGEMENT OF SECTIONS

Section

- 1—Short title.
- 2—Interpretation.
- 3—Prohibition against unlicensed Auctioneers.
- 4—Establishment of Auctioneers Licensing Board.
- 5—Meetings of the Board.
- 6—Functions of the Board.
- 7—Revenue.
- 8—Eligibility for licence.
- 9—Application for grant of licence.
- 10—Conditions applicable to grant of licence.
- 11—Refusal to grant licence.
- 12—Form of licence.
- 13—Duplicate licence.
- 14—Renewal and amendment of licence.
- 15—Fee.
- 16—Duration of licence.
- 17—Licences not transferrable.
- 18—Register of Licences.
- 19—Complaints.
- 20—Revocation of licence by the Board.
- 21—Suspension of licence by the Board.
- 22—Penalty.
- 23—Complaint to police.
- 24—Acquittal no bar to discipline.
- 25—Recovery of charges by Auctioneer.
- 26—Revocation or suspension of licence by Court.
- 27—Right of recovery of damages from an Auctioneer.
- 28—Auctions.

- 29—Inherent powers of the Court.
- 30—Misconduct by Auctioneers.
- 31—Transitional and saving provisions.
- 32—Issuance of licence in special circumstances.
- 33—Repeal of the Court Brokers Act (20) and the Auctioneers Act (Chapter 526).
- 34—Amendment of The Law of Contract (Chapter 23).
- 35—The Chattels Transfer Act (Chapter 28).
- 36—The Disposal of Uncollected Goods Act (Chapter 38).
- 37—The Distress for Rent Act (Chapter 293).
- 38—The Registered Land Act (Chapter 300).
- 39—The Agricultural Finance Corporation Act (Chapter 323).
- 40—The Pawnbrokers Act (Chapter 529).
- 41—The Estate Agents Act (Chapter 533).
- 42—Power to make rules.

PROPOSED AUCTIONEERS BILL

(With recommendations and comments thereon in [heavy print])

CHAPTER

THE AUCTIONEERS ACT

Commencement:

An Act of Parliament to provide for the licensing and control of Auctioneers and for purposes incidental thereto and connected therewith

[No comment.]

PART I—PRELIMINARY

1. This Act may be cited as the Auctioneers Act.

[No comment.]

2. In this Act, unless the context otherwise requires:

“*Auctioneer*” means a person licensed under this Act who carries out, any or all of the following functions:

(a) attachment and sale of any property under order of the Court or by force of law or contract;

(b) sells or offers for sale by auction and includes every person who sells or offers for sale any movable or immovable property or any interest therein at any sale where any person becomes or may become the purchaser of the same by competition and being the highest bidder, either by being the sole bidder, or increasing upon the biddings made by others, or decreasing on sums named by the Auctioneer or person acting as Auctioneer, or by any other mode of sale by competition;

(c) levies distress for rent or distrains under any other written law.

[The reference to “any other written law” is to the Income Tax (Distraint) Rules and the Value Added Tax (Distraint) Regulations].

(d) carries out evictions under an order of court;

(e) repossesses goods from any person under any law or contract; and

(f) by auction disposes, sells or offers for sale goods held by any person as bailee under any law or contract.

and includes a firm all of whose partners are licensed under this Act but excludes any sale by auction of coffee or tea.

[The definition has been worded so as to include court attachment and sale; eviction by Court Order; anyone who sells by auction; the levying of

distress for rent or under the income tax or value added tax legislation; sale by auction of goods whether under chattels transfer, uncollected goods, hire purchase or other legal situation where the goods of one person can lawfully be sold by another. We have excluded from the definition auctions of tea and coffee about which we received no complaints and which seemed to operate satisfactorily under the aegis of the Coffee Act (Chapter 333) and the Tea Act (Chapter 343).

As a matter of legal interest the initial comment in 4th Halsbury's Laws of England Volume 2 paragraph 701 on "Auction" and "Auctioneer" states—

"An auction is a manner of selling or letting property by bids, usually to the highest bidder by public competition. The prices which the public are asked to pay are the highest which those who bid can be tempted to offer by the skill and tact of the Auctioneer under the excitement of open competition. Although the word "auction" is derived from the latin *auctio*, an increase, a "Dutch auction" is one where property is offered at a certain price and then successively at lower prices until one is accepted.

An Auctioneer is an agent who sells goods or other property by auction].

"Board" means the Auctioneers Licensing Board established under section 4 of this Act;

"Court" means any Court of Kenya of competent jurisdiction;

"Executive Secretary" means the executive secretary appointed under section 4 of this Act;

"licence" means a licence in force under this Act;

"place of business" means each separate building and each separate part of a building at which the business of an auctioneer is carried on;

[No comment is called for in respect of the definitions of:

"Board"

"Court"

"Executive Secretary"

"licence"

"place of business"]

[SECTION 3—PROHIBITION AGAINST UNLICENSED AUCTIONEERS:]

3. (1) Subject to subsection (2), a person who acts as, or who holds himself out as acting as, an Auctioneer without being licensed under this Act shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

[No comment necessary: a straight forward prohibition and penalty of KSh. 50,000 or twelve (12) months in prison or both]

(2) A court may, for exceptional reasons to be recorded by it in writing, extend the area of operation of an auctioneer for the purposes of execution of a specified warrant on which the reasons for such extensions have been endorsed in order to facilitate execution in an area in which there is no licensed auctioneer.

[We have two comments:

1. At present in Kenya, there are areas, mostly very remote, where there is no Auctioneer, it being the present requirement to be continued in the new act only for Class "A" licences, that an Auctioneer shall only be able to operate within a limited area specified in his licence.

This sub-section permits extension of the geographical jurisdiction of an Auctioneer for reasons to be recorded on the warrant.

2. One of the complaints made to us was that section 3 (2) of the Court Brokers Act is frequently abused in that people not licensed as Court Brokers have been getting warrants for execution from the Courts. The proposed section limits the discretion of the Court to use this power to extending the geographical area within which a licensed Auctioneer can operate for a particular purpose. The section cannot be used to give someone who is not a licensed Auctioneer the power to act as such.

PART II—AUCTIONEERS LICENSING BOARD

[SECTION 4—AUCTIONEERS LICENSING BOARD :]

The advantage of a centralized Auctioneers Licensing Board with regional representation seem to us to outweigh the disadvantages.

The advantages are:

- greater expertise;
- full time secretariat;
- centralized record keeping;
- greater consistency;
- more sophisticated and well maintained office machines;
- common standards can be applied throughout Kenya.

The disadvantages are:

- outlying areas will feel remote from the Board;
- local knowledge of the suitability or otherwise of persons to be Auctioneers will not always be tapped;
- probably more expensive to run because of higher rents and allowances in Nairobi.]

4. (1) There is hereby constituted the Auctioneers Licensing Board:

[Our thinking is that:

The Board should come under the overall authority of the Chief Justice: in part that is because the Courts are often the authorizing authority for auction sales and in part because where an owner wishes to stop or criticize or set aside an auction, a court application is his only remedy.]

(2) The Board shall consist of the following persons appointed by the Chief Justice:

- (a) A Resident Magistrate, Senior Resident Magistrate, Principal Magistrate, Senior Principal Magistrate or Chief Magistrate, who shall be the chairman.
- (b) Two advocates of the High Court of not less than ten (10) years standing one of whom shall, in the absence of the chairman, act as chairman.
- (c) Permanent Secretary Office of the President in charge of internal security or his representative.

[In the course of the Task Force's investigations it was the Office of the President in its internal security mode which was extremely helpful in identifying problem areas and problem people in the districts. Such assistance would be likely to continue to the Auctioneers Licensing Board.]

- (d) Two persons who have acted as Auctioneers for a period of five years immediately preceding appointment.
- (e) One (1) representative from a Bank or Financial Institution including Agricultural Finance Corporation and Agricultural Development Corporation.
- (f) Five other members appointed as follows:
 - (i) Two to represent Rift Valley, Western and Nyanza Provinces.
 - (ii) One to represent Nairobi and Central Provinces.
 - (iii) One to represent Coast and North-Eastern Provinces.
 - (iv) One to represent Eastern Province.
- (g) One (1) member of the Kenya Chamber of Commerce and Industry.

[The Board will comprise thirteen (13) people as follows:

- (a) A Magistrate as Chairman.
- (b) 2 Advocates of not less than 10 years standing, one of whom will act as Chairman in case of need.

- (c) **The Permanent Secretary in the Office of the President or his representative.**
- (d) **2 Auctioneers of not less than 5 years standing.**
- (e) **1 representative from a Bank or Financial Institution including the Agricultural Development Corporation and the Agricultural Finance Corporation.**
- (f) **Provincial representatives as follows:**
 - 2 between Rift Valley, Western and Nyanza.**
 - 1 between Nairobi and Central.**
 - 1 between Coast and North-Eastern.**
 - 1 for Eastern.**
- (g) **A representative from the Kenya Chamber of Commerce and Industry.**

We think a board larger than 13 would be too cumbersome and expensive to operate successfully. One advantage of a board of 13 is that the pool of persons available for disciplinary hearings will be wide enough to ensure that disciplinary hearings invariably proceed and are not plagued by adjournments for lack of quorum which happens far too frequently in the legal profession.]

(3) A member of the Board shall be appointed for three (3) years but may resign his office by written notice to the Chief Justice:

Provided that the Chief Justice may revoke the appointment of any member if in his absolute discretion he considers it proper to do so.

[Appointment is by the Chief Justice who would personally consult with appropriate bodies about appointments under Clauses 4 (2) (b), (d), (e), (f), and (g).]

(4) There shall be an Executive Secretary who shall be a Magistrate appointed by the Chief Justice:

Provided that the Executive Secretary may resign or his appointment may be revoked by the Chief Justice.

[The Executive Secretary will be a Magistrate who will carry out his functions in addition to his work as a Magistrate. In fact, we believe that within a few years, the Executive Secretary is likely to find himself working full-time as such. We think we need the Executive Secretary to be a Magistrate as he will be the controlling force in the Board's disciplinary jurisdiction.]

[SECTION 5—MEETINGS OF THE BOARD:]

5. (1) Meetings of the Board shall be held at least once in each quarter and at any other times appointed by the chairman.

[We recommend regular meetings at least once a quarter.]

(2) The quorum of the Board shall be five (5) except in its disciplinary jurisdiction when the quorum of the Board shall be three (3): in each case one (1) of whom shall be a qualified lawyer.

[We think it quite probable and indeed desirable that the Board acting in its disciplinary jurisdiction should meet outside Nairobi—for example, to deal with complaints arising in the Rift Valley and Western Kenya there is much to be said to it meeting in Nakuru or Eldoret. A quorum of five (5) in those circumstances would in our view tend to lead to unnecessary expense and unnecessary adjournments whereas a quorum of three (3) should be attainable without great difficulty or expense.]

Some members of the Task Force had reservations about the quorum of three (3) for disciplinary matters but were ultimately persuaded to accept the lower figure by the poor example of the legal profession and the serious backlog of work in the legal disciplinary committee.]

(3) The Chairman shall have a deliberative and a casting vote.

[The Chairman shall have a casting vote and will be a lawyer.]

(4) Subject to this section the Board may regulate its own procedure.

[The Board shall regulate its own procedure. With a Chairman who has legal training this should not be unduly onerous.]

[SECTION 6—FUNCTIONS OF THE BOARD:]

6. The functions of the Board shall be—

(a) to consider applications for licences and applications to renew or amend licences;

(b) to train monitor and supervise the activities of Auctioneers;

(c) to receive and investigate complaints against Auctioneers;

(d) to conduct disciplinary proceedings against Auctioneers and to impose penalties and to award costs;

(e) to grant, amend, renew, revoke and suspend licences.

[These are to consider applications; to supervise the activities of Auctioneers; to investigate complaints; to take disciplinary proceedings and to grant amend renew revoke and suspend licences.]

The effect of this section is that the Board is open to the criticism that it is both judge and jury. However bearing in mind the widespread

dissatisfaction of the general public with the activities of "Auctioneers" (we use the word as per the proposed definition in the new Bill) we believe an autocratic approach under the aegis of the Chief Justice with a legally qualified chairman of the Licensing Board to be warranted in the present state of Kenya's development and to provide adequate protection to the dedicated and honest "Auctioneer" while dissuading the speculators and sharp practitioners from seeking their fortunes in auctioneering.]

[SECTION 7—REVENUE:]

7. All moneys received by the Board pursuant to this Act shall be paid into the Consolidated Fund.

[All moneys received by the Board are to be paid into the Consolidated Fund; it is expected that the Auctioneers Licensing Board will be self-financing. Even if the Auctioneers Licensing Board does run at a small loss, it is our view that the overall benefit to be desired by the nation from a properly regulated auctioneering profession outweighs the purely financial cost. In any event, if in any one (1) year there should be a financial deficiency, in addition to an increase in fees which the Chief Justice could easily impose, the Board could be urged to increase awards of costs and fines in subsequent years.

We should also point out that Auctioneers already contribute to the Consolidated Fund as they pay KSh. 6,600 a year for a trade licence under Legal Notice Number 237/1988.

We would hope that administrative arrangements can be made for the Auctioneers Licensing Board to collect trade licence fees centrally. It would seem fair and more efficient that the Board retains this revenue as a central Government contribution to the running of the Board and the training of Auctioneers.

Revenue:

Allowing 1,000 licences of which 500 "A" and 500 "B" you have:

	<i>KSh.</i>
Application fees 1,100 x 1,000/-	1,100,000.00
(100 rejects)	
A licence 500 x 5,000/-	2,500,000.00
B licence 500 x 7,500/-	3,750,000.00
Fines and costs (guess)	250,000.00
Miscellaneous income	50,000.00
	<hr style="border-top: 1px solid black;"/>
	7,650,000.00
	<hr style="border-top: 3px double black;"/>

Say, total income KSh. 7,500,000 at a guess although some members of the Task Force expressed the view that the new more stringent qualifications for an Auctioneer might result in an initial decline in numbers.

Expenditure:

We expect that the Board will meet:

- (a) Full Board meetings, four (4) times a year at most.
- (b) Disciplinary Board meetings, once a month except for December but two (2) or three (3) of them at least in each year outside Nairobi.

Full Board meetings, when they occur, will probably be followed by Disciplinary Board meetings to save on travelling costs.

Our rough estimates are that Revenue and Expenditure will be very approximately equal.

We estimate that the Board will in addition to office space to be provided by Government require the following staff:

Executive Secretary (Magistrate) ..	1
State Counsel including Prosecutors ..	2
Investigation Officers	2
Executive Officers	2
Clerical Officers	3
Typing Secretaries	5
(i) Executive	1
(ii) Personal	1
(iii) Short-hand Typist	1
(iv) Copy Typist	2
Subordinate Staff	7
(i) Cleaners	2
(ii) Messengers	2
(iii) Receptionist/ Telephonist ..	1
(iv) Drivers	2
Vehicles	2

The budget needs to be reworked in detail but we append as Appendix 2 the current years (approved) and next year (estimates) for the Advocates Complaints Commission showing total estimates of expenditure of just under

KSh. 7,000,000. The estimates have exceptional items for motor vehicles (£70,000) and Plant-Machinery replacement (£30,000) which make the total higher than in a normal year. That organization is at present slightly larger than what we contemplate for the Board, but the Auctioneers Licensing Board does have responsibility for the disciplinary procedure which in the case of Advocates is undertaken by the Law Society not by the Complaints Commission. However, taking a broad view of it, we believe the licensing and disciplining of Auctioneers is unlikely to cost more than KSh. 7,000,000 including start up costs at current prices which should be covered by application and licence fees and by awards of costs and fines.

PART III—LICENSING AND IDENTITY

[SECTION 8—ELIGIBILITY FOR LICENCE:]

[It is at this point that we propose a firm departure from the existing law.

Recommendation Number 3:

We recommend that new and stringent requirements be specified in the new Act for persons aspiring to be licensed as Auctioneers. Under present law and practice, more or less anyone who can get approval from the Provincial Administration and show a modicum of experience can be licensed. The result has been that firms of Auctioneers rise (and subsequently fall—usually sooner rather than later) with monotonous regularity to the detriment of the public at large. Each time an Auctioneer falls, someone somewhere suffers unjustified loss or damage with little or no recourse.

Following that background, we suggest that it should be more difficult to become an Auctioneer and easier to weed out applicants of doubtful record, experience or ability. Our suggested requirements and disqualifications are set out in Section 8.

One representation made to us by the Kenya Association of Auctioneers was that it should be a requirement for renewal of a licence that the applicant be a paid up member of that Association. Unlike the Law Society of Kenya, the Kenya Association of Auctioneers is a Society registered under the Societies Act. On balance we thought that the right of Government to de-register a Society should be preserved. It is open to the auctioneers to pressurize Government to accord their Association statutory recognition as other professions have already done successfully.]

8. (1) A person who has attained the age of 30 (thirty) and is under 65 (sixty-five) years of age at date of commencement of the licence applied for and is a Kenya citizen shall be eligible to hold a licence under this Act:

Provided that a person who has not attained the age of thirty (30) years may be eligible to hold a licence if he shows to the satisfaction of the Board that he has had at least seven (7) years apprenticeship with a reputable firm of Auctioneers.

[Requirements: Kenya Citizen

At least thirty (30) years of age and under sixty-five (65) years of age at date of commencement of licence applied for—proviso for someone under thirty (30) with seven (7) years apprenticeship in a reputable firm.

We consider that these requirements will ensure that only those with the necessary experience will qualify as Auctioneers; the upper age limit is thought desirable to prevent elderly Auctioneers being tempted to carry out their duties by proxy.]

(2) (i) A corporation shall not be eligible to hold a licence under this Act.

(ii) Auctioneers shall be entitled to practise in partnership provided that all the partners are licensed under this Act.

(3) Notwithstanding sub-section (1), a person shall not be eligible to hold a licence under this Act if—

(a) (i) he has been convicted in the ten years preceding his application of an offence involving fraud, dishonesty or immorality;

(ii) he has at any time been convicted of an offence under this Act or been disqualified by the Board under this Act.

(b) he is a judge or magistrate or is employed in any capacity as an executive or subordinate officer of a court;

(c) he is a practising advocate, or is employed in any capacity by a practising advocate;

(d) he is a Member of Parliament, councillor, civil servant, member of staff of any local authority or statutory body or parastatal;

(e) he has not completed ten (10) years since his licence was revoked;

(f) his period of disqualification as an Auctioneer by the Board has not expired at the date of commencement of the licence applied for;

(g) he has not paid any fine compensation or costs imposed by the Board due to the Board or any other person at date of application;

[Disqualifications:

(a) Conviction for an offence involving fraud dishonesty or offences involving moral turpitude within preceding ten (10) years.

- (b) Conviction at any time of an offence under this proposed new Act.
- (c) Judge, magistrate, court employee.
- (d) Practising Advocate or employee thereof.
- (e) Member of Parliament, councillor, civil servant, employee of any local authority, or employee of any statutory body.
- (f) Any person whose licence has been suspended or revoked where the period of suspension has not expired or in the case of revocation ten (10) years have not run since the licence was revoked.]

(4) A person who obtains a licence knowing that he is not eligible to hold one shall be guilty of an offence and liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment for a period not exceeding twelve (12) months or to both such fine and imprisonment in addition to any other penalty.

[Imposes a severe penalty for anyone obtaining a licence who is ineligible to do so of Kenya Shillings fifty thousand (KSh. 50,000) or twelve (12) months in prison or both in addition to any other penalty. We think this penalty will be severe enough to ensure that people who do not qualify as Auctioneers do not get licences even for a short period. There has been a tendency under the weaker existing legislation for people who can obtain approval at Provincial level to obtain an initial licence which is then abused for a short period to the detriment of the public and not renewed.]

[SECTION 9—APPLICATION FOR GRANT OF LICENCE:]

9. (1) Application for a licence shall be made to the Board in the prescribed form and shall identify the place of business and the class of licence in respect of which the application is made provided however that the Board may upon application issue a special licence to a person who is not a citizen of Kenya but who by virtue of his special knowledge and experience in Kenya or elsewhere is otherwise qualified as a fit and proper person to conduct the same to hold any auction of a special nature and for that purpose to dispense with the other requirements of eligibility provided in this Act.

[A draft application form is appended to the draft Rules as well as draft forms of recommendation. The forms are more detailed than those in use at present with the intention of obtaining a full and frank disclosure of the applicant's background; recommendations from a Chief or religious leader or an Advocate of ten (10) years standing should ensure that those with a poor reputation for honesty do not even get as far as applying for a licence. The provision for a special licence is to cover those unusual situations for which it is difficult to legislate. For example we note in Zimbabwe that surplus elephants are up for sale: in Kenya there have from time to time been specialized auctions of race horse, antiques, carpets and other items where

specialized knowledge on the part of the Auctioneer and the bidder is important. There has certainly been one international auction of works of art for charitable purposes. The proviso is designed to cover these special conditions.]

(2) A person who knowingly makes a false statement in connection with an application for the grant, renewal or amendment of a licence shall be guilty of an offence.

[To make a false statement in an application form is an offence.]

(3) Except as may be otherwise provided by law, no auctioneers' licence shall 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 dealings, or sale of, which is prohibited to persons other than those duly licensed, registered or otherwise authorized in that behalf, provided that it shall not be necessary for Auctioneers to take out licences for the sale of liquor or television, radio or video sets or items sold in execution of a court decree or distress for rent.

[This is a saving to preclude Auctioneers selling things which are controlled by the law in some way such as firearms, dangerous drugs, poisons, coffee beans but not radio, television and video sets or liquor which are items commonly attached or distrained upon. The existing laws require an auctioneer to hold a radio and television dealers licence at a cost of Kenya Shillings three thousand (KSh. 3,000) per annum when he may only sell a few sets a year which we consider too onerous.]

[SECTION 10—Conditions Applicable to Grant of Licence:]

10. (1) The Board shall not grant a licence unless it is satisfied that the applicant is eligible to hold a licence and that he is a fit and proper person provided that where an applicant proposes to work in the full-time employment of another licensed Auctioneer the Board may dispense with any requirements for secure premises and insurance if such requirements are already met by the employer but nothing in this proviso shall permit a licensed Auctioneer in employment having the benefit of any such dispensation to practise on his own account or as an independent contractor.

(2) For the purpose of satisfying itself as to the eligibility and suitability of an applicant, the Board may make any necessary inquiries and in pursuance thereof may serve a notice in writing on the applicant or any person other person requiring him to furnish to the Board any information within such period as the Board may require.

[In addition to eligibility under section 8 an applicant has to be a fit and proper person thus conferring a discretion on the Auctioneers Licensing Board which under section 10 (2) is authorized to make inquiries to assist it

in coming to a decision. The Auctioneers Rules Part II—Licensing and Identity will make provision for “A” and “B” licences as follows:

“A” General Auctioneering Licence limited to specific districts.

“B” Execution of Court Orders, and levy of distress within specified districts: General Auctioneering: realization of charged securities, repossessions and sale of any property throughout Kenya.

Recommendation Number 4:

In an attempt to tighten up on honesty, experience and security of seized goods, we recommend that the requirements for licences should be as follows:

	A	B
	<i>Licence</i>	<i>Licence</i>
a. Application fee	KSh. 1,000	KSh. 1,000
b. Certificate of good conduct from the Criminal Investigation Department (C.I.D.)	Required	Required
c. Recommendation from area magistrate	Required	
d. Recommendation from Auctioneer under whom applicant has worked	Required	Not Required
e. Recommendation from religious leader or area chief or advocate of 10 years standing	Required	Required
f. Four “O” level or equivalent Passes—including English and Mathematics	Required	Required
g. Proof of availability of secure premises for:		
(i) storage	Required	Required
(ii) auction sales	Required	Required
h. Cash Deposit or Guarantee or Bond for due compliance with the Act	KSh. 100,000	100,000
i. Insurance of premises and contents for burglary, fire, theft	KSh. 500,000	KSh. 1,000,000
j. Insurance of goods in trust	Not required	KSh. 500,000
k. Induction course	Required	Not required

<i>l. Number of years in a reputable firm of Auctioneers</i>	<i>5 years</i>	<i>5 years</i>
<i>m. Holder of an "A" Auctioneers Licence</i>	<i>N.A.</i>	<i>3 years as an "A" Licence holder]</i>

(3) It shall be a condition of the grant of a licence that the applicant shall within ninety (90) days of the said grant nominate not less than two licensed auctioneers of either class jointly to wind up the applicant's auctioneering business if the applicant dies or loses his licence for any reason while carrying on business as sole proprietor or sole surviving partner of an auctioneering business: such nominations may be changed in writing by a licensed auctioneer at any time but any changes shall be notified forthwith to the Board and if an Auctioneer fails to execute such nominations within the time aforesaid his licence shall be suspended until such nominations are executed.

[It seems to be a fact of professional life in Kenya that a very high percentage of professionals prefer to practise as sole proprietors. This section is intended to ensure that there is someone to wind up a sole proprietorship in the event of the sole proprietor's death and in particular to safeguard clients' moneys. We have no figures from the auctioneering profession, but of about 1,700 practising Advocates about two sole practitioners die each year.]

(4) In the event that the persons nominated to wind up the auctioneering business under the foregoing sub-section fail to take action within thirty (30) days of being required by the Board to do so, the Board itself may nominate one (1) or more licensed auctioneers of any class jointly to do so and the Board may take such further action effectively to assist the nominees to wind up the said business as it shall think fit to do.

(5) Upon the issue of an auctioneering licence, the Board shall also issue to each licence holder an identity card containing the name address and class of licence in permanent form and such identity card:

- (a) shall be worn prominently by the Auctioneer on all occasions of attachment seizure and sale.
- (b) shall be held by the Auctioneer as incidental at all times to his Auctioneer's licence and therefore subject to renewal amendment replacement, revocation, suspension and return as part of his licence.

[With a view to further tightening on the profession of Auctioneer (as defined in the new Bill) it is proposed that a licensed Auctioneer when engaged in any attachment or seizure under court order or letter of instruction shall at all times carry with him and exhibit to any person reasonably requesting it an identity card issued by the Board. This measure is designed to meet a common complaint that Auctioneers especially in their

court broking or distraint mode wear no uniforms and cannot be distinguished from any other member of the public. It takes little imagination to see that there is scope for enterprising thieves to masquerade as brokers when they are nothing of the sort.]

[SECTION 11—REFUSAL TO GRANT A LICENCE:]

11. Where the Board refuses to grant a licence it shall serve a notice of refusal, indicating the reasons therefor, on the applicant by registered post or by delivering it to the applicant personally.

[Provision is made for a refusal to be notified to the applicant with reasons. The most obvious reason is going to be that the applicant is "not a fit and proper person" which may well trigger an application for judicial review. However, under the existing law there has already been a rash of threats to apply for judicial review used as a means to discover the reasons for refusal of licence. We hope that by giving reasons the number of such threats will diminish.]

[SECTION 12—FORM OF LICENCE:]

12. (1) A licence shall be in the form to be determined by the Board and shall include—

- (a) the full names and national identity card number of the person to whom the licence is granted;
- (b) the place of business in respect of which the licence is granted;
- (c) the district or districts to which the licence applies; and
- (d) the date of its expiry, which shall be no later than the thirty-first day of December in each year.

(2) The licence shall be displayed in a conspicuous position within the place of business in respect of which it is granted.

[The form of licence will be determined by the Board and will have to be displayed at the Auctioneer's place of business.]

[SECTION 13—DUPLICATE LICENCE:]

13. If the Board is satisfied that a licence has been lost, destroyed or mutilated, it may, on payment of the prescribed fee, issue a duplicate licence.

[No comment required.]

[SECTION 14—RENEWAL AND AMENDMENT OF LICENCE:]

14. (1) A licensee who is still eligible under this Act, may, not earlier than three (3) months, nor later than one (1) month, before the date of expiry of his licence, apply to the Board for a renewal thereof.

(2) Where an application for the renewal of a licence is made by a licensee who is still eligible under this Act, the licence shall remain in force until the application is dealt with unless the licence is suspended or revoked under the provisions of this Act or the Applicant ceases to be eligible.

(3) A licence may be amended, on application to the Board and after payment of the prescribed fee or on the Board's own motion—

- (a) by substituting one place of business for another; or
- (b) by adding or deleting in the licence a district in which the holder is licensed to act; or
- (c) in any other manner that the Board may think fit.

(4) The Board may refuse to renew or amend a licence upon any of the grounds upon which it may refuse to grant a licence or revoke a licence under section 10 or 20 and the provisions of subsection (4) of section 20 shall apply to any refusal to renew or amend.

(5) The licence shall be renewable every calendar year.

[The concept is that licences shall be renewed annually on a calendar year basis. Provision is made for amendment as there could be special circumstances such as a temporary change of place of business or an extension of the district within which the Auctioneer was carrying on business.]

[SECTION 15—FEE:]

15. Where the Board is satisfied as to the eligibility and suitability of an applicant it shall grant or renew or amend a licence on payment of the prescribed fee.

[SECTION 16—DURATION OF LICENCE:]

16. Subject to this Act—

- (a) a licence shall be valid for a period not exceeding twelve (12) months;
- (b) where the licence is renewed or amended it shall be valid subject to section 12 of this Act for a period of one (1) year from the date of expiry of the previous licence except in case of amendment the Board may limit the time for which the amendment shall be valid.
- (c) where a licence is suspended by the Board under this Act and the suspension is set aside, the licence shall continue to be valid for the period remaining unexpired thereon at the time the suspension took effect.

[As already stated, it is thought licences should be renewed annually.]

[SECTION 17—LICENCES NOT TRANSFERABLE:]

17. (1) A licence shall not be transferable.

(2) Upon the death, bankruptcy or other incapacity of a licensee, the persons nominated under section 10, or his personal representative, or trustee in bankruptcy or other person acting on his behalf shall return his licence to the Board and shall also return all warrants, whether executed or unexecuted, to the court which sent them to the licensee.

Recommendation Number 5:

Due to personal nature of the Auctioneer's licence, we recommend that an Auctioneers Licence should not be capable of transfer nor should a corporation be eligible to be a licensed Auctioneer. A licensed Auctioneer will be permitted to employ another licensed Auctioneer to assist, but will nevertheless remain personally accountable to the Board. We recommend that Auctioneers will practise either under their own names or in the name of a firm all of whose partners are licensed Auctioneers and that the personal liability of Auctioneers will be unlimited.

[SECTION 18—REGISTER OF LICENCES:]

18. (1) The Board shall keep a register, in such form that it determines, of licences granted and shall record therein in respect of each licence:—

- (a) the particulars required by section 12;
- (b) particulars of any duplicate issued or any amendment of the licence made under sections 13, 14 and 16;
- (c) particulars of any revocation or suspension of the licence under section 19, 20, 21 or 26;
- (d) the district or districts to which the licence applies;
- (e) any other particulars the Board may require to be recorded.

(2) A person may, during reasonable office hours, and on payment of the prescribed fee, inspect the register of licences.

(3) A person who is:—

- (a) a member of the police force, or a public officer, acting in the course of his duty; and
- (b) a person authorized in writing by the Board, may inspect the register without payment.

[We contemplate that a formal register will be kept and that the public will have the right to inspect it on payment of a fee.]

A list of Auctioneers licensed in any calendar year with their addresses and the class of their licences shall be published in the *Kenya Gazette* once in each calendar year.

This is some protection to the public from rogue unlicensed Auctioneers purporting to act as such.]

PART IV—DISCIPLINARY FUNCTIONS OF THE BOARD

[SECTION 19—COMPLAINTS:]

19. (1) A complaint against an 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 person.

(2) Where a person makes a complaint under subsection (1), the complaint shall be by affidavit by himself setting out the allegations of misconduct which appear to arise on the complaint to the Board, accompanied by such fee as may be prescribed.

[These provisions are similar to those in use in the case of Advocates. We think an Affidavit by a complainant is necessary to eliminate frivolous complaints and also as a means of putting in writing to the Auctioneer the misconduct complained of.]

(3) The Board shall give the Auctioneer against whom the complaint is made an opportunity to file an affidavit in reply 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 (7) 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 such complaint without requiring the Auctioneer to whom the complaint relates to answer any allegations made against him and without hearing the complaint.

[These provisions too come from the Advocates Act but have been extended slightly to include an Affidavit in reply from the accused Auctioneer.]

(4) For the purposes of any application or complaint made to it under this Part, the Board may administer oaths or affirmations, and the complainant and the 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.

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

(6) The Board may make rules for regulating the making to the Board, and the hearing and determination by the Board, of applications or complaints under this Part.

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

- (a) that such Auctioneer be admonished; or
- (b) that the Auctioneer's licence be suspended for such period as it thinks fit not exceeding six (6) months; or
- (c) that the Auctioneer's licence be revoked; or
- (d) that the class of the Auctioneer's licence be altered from Class B to Class A for such period as it thinks fit; or
- (e) that such Auctioneer do pay a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000); or
- (f) that such Auctioneer do pay compensation not exceeding Kenya Shillings fifty thousand (KSh. 50,000) to any person damaged by his misconduct; or
- (g) that such Auctioneer be disqualified from eligibility for an Auctioneer's licence or any class thereof for such period as the Board thinks fit; or
- (h) such combination of the above orders as the Board thinks fit.

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

(9) Any order of the Board may be filed with the subordinate Court and shall upon service of the notice of filing thereof upon the Auctioneer be enforceable in the same manner as an order of the Court to the like effect.

(10) For the purposes of this section the quorum of the Board shall be the Chairman or in his absence one of the advocate members of the Board and at least two (2) other members.

(11) Any Auctioneer aggrieved by any order of the Board made under its disciplinary jurisdiction may within thirty (30) days after the receipt by him of written notice of such order, appeal against such order to the High

Court by giving notice of appeal to the Registrar thereof and shall file with the Registrar a memorandum setting out his grounds of appeal within thirty (30) days after the giving by him of such notice of appeal. The decision of the High Court on such appeal shall be final.

20. In addition to its powers under Section 19:—

- (a) The Board may revoke a licence if it is satisfied that the licensee made a statement in or in connection with his application for the grant, amendment or renewal of that licence which he knew to be false in any material particular.
- (b) The Board shall revoke a licence upon the happening of any event which renders the licensee ineligible to hold a licence.
- (c) The provisions of section 9 of the Probation of Offenders Act shall not apply to this section.
- (d) Where the Board has power to revoke a licence it shall give the licensee sufficient opportunity to show cause why the licence should not be revoked.
- (e) Where the Board revokes a licence, it shall serve notice of revocation, indicating the reasons therefor, on the licensee personally or by registered post and shall publish a notice in the Gazette and in one local daily newspaper within fourteen (14) days of the date of revocation.
- (f) The revocation of the licence shall have effect from the date of service of the notice of revocation which shall be:
 - (i) where the notice is sent by registered post, a date seven days after the date of posting; or
 - (ii) where the notice is delivered to the holder of the licence personally, the date of delivery or
 - (iii) Upon publication of the notice whichever is earlier.
- (g) Where a licence is revoked, the licensee shall forthwith deliver the licence to the Board and a licensee who, without reasonable excuse, the burden of proving which shall lie on him, fails to do so shall be guilty of an offence and liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment for a period not exceeding twelve (12) months.

[We have set out specific provisions that mirror the Advocates Act but for this purpose have reduced the quorum of the Board to three (3), one (1) of whom will be a lawyer.

We have had some debate as to how far the disciplinary powers of the Board should go: should the Board be able to impose limited fines and award

limited compensation in addition to suspension and revocation of the licence. On balance we think that the reputable auctioneer has nothing to fear from such provisions.]

21. (1) In addition to its powers under section 19 of this Act the Board may suspend a licence for a period not exceeding six (6) months:—

- (a) If the licensee is charged with an offence involving fraud, dishonesty or immorality, violence and malicious damage to property.
- (b) If, having received a complaint against the licensee concerning his activities in executing court orders or when distraining, the Board considers it appropriate to suspend the licence pending further investigation of the complaint.
- (c) If the licensee when executing court warrants or distraining has acted in a manner incompatible with his status as an officer of the court.

(2) The Chairman of the Board, if satisfied of the necessity for acting without delay, may for any of the reasons set out in sub-section (1) hereof suspend a licence until the next meeting of the Board but such suspension shall not remain in force for a period exceeding six (6) weeks and the Executive Secretary shall forthwith serve a notice of the suspension indicating the reasons therefor upon the licensee personally or by registered post.

(3) Where the Board suspends a licence it shall serve a notice of suspension, indicating the reasons therefor, upon the licensee personally or by registered post and shall publish a notice in the Gazette and in one local daily newspaper within fourteen (14) days of the date of suspension.

(4) The suspension shall take effect on the day following the date of service of the notice of suspension which shall be:—

- (a) where the notice is sent by registered post, a date seven (7) days after the date of posting; or
- (b) where the notice is delivered to the licensee personally, the date of delivery; or
- (c) upon publication of the notice whichever is earlier.

(5) Before the board suspends a licence it shall give licensee sufficient opportunity to show cause why the licence should not be suspended.

PART V—MISCELLANEOUS AND GENERAL

22. (1) A person who fails to comply with any of the provisions of this Act or the Rules made thereunder shall be guilty of an offence.

(2) A person who commits an offence under this Act or any Rules made thereunder for which no penalty is expressly provided shall be liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.

[The Auctioneers Rules will cover licensing, attachments, sales, auctions, accounts, discipline, further offences, fees and remuneration.]

23. Upon the making of a complaint to the police of any offence under this Act, the police shall make necessary investigations and take appropriate action as deemed fit under the law.

[One of the complaints made to us on several occasions was that while complaints against Auctioneers are often made to the Police, the Police are extremely reluctant to investigate and try to pass the complaint off as a "civil matter". The object of this section is to ensure the Police do investigate such complaints thereby we hope making sharp practice by Auctioneers less likely.]

24. An Auctioneer may be liable, notwithstanding the fact that he has been acquitted of an offence, to disciplinary proceedings under this Act.

25. (1) An Auctioneer making any sale other than a forced sale by auction shall (unless it be agreed otherwise between him and the seller) be entitled to sue for, recover and discharge all sums due in respect of such sale.

(2) An Auctioneer making any sale other than a forced sale, (unless it be agreed otherwise between him and the seller) shall be liable for the due payment to the seller of the net proceeds of all sales of property within fifteen (15) days from the date of sale of such property.

26. (1) The court imposing any fine under this Act upon any Auctioneer, or convicting any Auctioneer of any offence in relation to any property entrusted to him for sale or in relation to the proceeds of sale of such property, may, if it shall appear that the offence is of such nature as to require the licence of such Auctioneer to be suspended or revoked make an order to that effect, and the licence shall be suspended or revoked accordingly.

(2) The court making any order of suspension or revocation of a licence shall forthwith intimate the same to the Board.

27. (1) Subject to the provisions of any other written law any person suffering any special or general damage by the unlawful and improper exercise by an Auctioneer of the powers given to an Auctioneer by law or by court shall be entitled to recover any damages directly suffered by him from the Auctioneer by action:—

[We have particularly in mind section 6 Judicature Act (Cap. 8) which gives protection to Court officers acting in good faith who exceed their jurisdiction for one reason or another. This section is designed to give a clear remedy against an auctioneer who for example sells property at a serious undervalue in collusion with the creditor.]

PROVIDED that—

- (i) nothing in this section shall prevent the Auctioneer claiming contribution or indemnity from any other person;
- (ii) nothing in this section shall limit the damages recoverable under any other written law.

[This saving is included to preserve the rights to double and treble damages for unlawful distress and pound breach under sections 8 and 7 of the Distress for Rent Act respectively.]

[SECTION 28—AUCTIONS:]

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

(2) It shall be stated in the particulars or conditions of sale by auction of any movable or immovable property whether such sale be without reserve or subject to a reserve price, or whether a right to bid is reserved. Where there is a reserve price in a forced sale the lot shall not be sold at the auction at a lower price; in other sales the lot may be sold at a lower price with the consent of the owner thereof.

(3) 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 on his behalf or employed by him to bid at such sale, or for the auctioneer to take knowingly any such bidding provided however if it is stated that the sale will be subject to a right for the seller to bid, it shall be lawful for the seller, or for any one person on his behalf, but not more than one, to bid at any such auction in such manner as he shall think proper.

(4) 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 employed by him to give one bid for each such lot and no more.

(5) If the seller or any person employed by him or on his behalf shall bid at any sale contrary to any of the preceding provisions of this section, any purchaser may refuse to fulfil his purchase, but the highest bona fide bidder shall be entitled, if he shall so elect, to have the immovable or movable property at the price offered by him.

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

(7) A sale by auction of any movable or immovable property is complete when the auctioneer announces its completion by the fall of the hammer notwithstanding any written law to the contrary.

(8) Until the sale is complete any bidder may retract his bid.

(9) Any person who shall knowingly receive or make any bid contrary to any of the provisions of this section or who shall make an accepted bid which he knows or ought in all the circumstances to have known he is unlikely to be able to perform or is fraudulent or is intended to avoid a valid sale of the lot bid for shall be guilty of an offence and in the case of an Auctioneer in addition to any other penalty to have his licence suspended or revoked.

(10) An auction shall take place at the date, time and place advertised and on no other date, time or place.

29. Nothing in this Act shall limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice in any matter it is seized of or is before it.

[This draft section is an amalgamation of S. 58 Sales of Goods Act and S. 14 (1) Auctioneers Act. We are proposing that the amalgamated section should apply to sales of both movable and immovable property. The Law of Contract Act S. 3 (4) already provides that a sale of immovable property by public auction is binding without writing contrary to the normal rule that land and interests therein can only be disposed of by written contract.]

PART VI—MISCONDUCT BY AUCTIONEERS

30. An Auctioneer when executing Court Warrants or distraining or when seizing or selling any property without the consent of the owner under any law or contract shall at all times act as if he were an officer of the Court and shall not do or omit to do any act or thing incompatible with such status and shall ensure that his servants act in all respects in a similar manner.

31. No person shall practise as an auctioneer after 31st December next following the date of the commencement of this Act unless he is licensed under the provisions of this Act provided that an Auctioneer who:—

- (i) had a licence valid until the 31st December of the previous year;
- (ii) being eligible has duly made application for a licence for the ensuing year;
- (iii) has not been advised by the Board of the decision of the Board on his application may act as an Auctioneer within the

terms of his former licence until the 31st March in the ensuing year but no longer.

PART VII—TRANSITIONAL REPEAL CONSEQUENTIAL STATUTORY AMENDMENTS AND RULES

32. (1) Any person who has been licensed as an auctioneer under the previous Act for three (3) consecutive years prior to the coming into force of this Act who is otherwise eligible by virtue of good conduct, premises, insurance and bond shall be eligible for a "B" licence.

(2) Any person who has attained the sixty-five (65) years or over and who has been licensed as an auctioneer under the previous Act for three (3) consecutive years prior to the coming into force of this Act who is otherwise eligible by virtue of good conduct, premises, insurance and bond may be granted a licence until the end of the first full calendar year from the coming into force of this Act.

[The transitional provisions permit the granting of a "B" licence to those who have held a licence for three (3) consecutive years under the previous Act without the need to serve three (3) years as an "A" Licence holder.

There is also a saving to enable those over 65 years of age to serve one (1) full year under the new Act before becoming ineligible.]

33. The Court Brokers Act (Chapter 20) and the Auctioneers Act (Chapter 526) are hereby repealed with effect from the date on which this Act comes into force.

34. The following Acts are hereby amended:—

(1) The Civil Procedure Act (Chapter 21)—

[We cannot recommend changes to the Civil Procedure Act or to the Rules except after prior consultation with the Rules Committee for which there has not been time.

However we have two main comments and one important recommendation:

- (i) There is an anomaly between the "goods exempt from attachment" under section 44 Civil Procedure Act and "articles exempted from distress" under section 16 Distress for Rent Act as read with section 19 (4) of the same Act.

Essentially the Distress for Rent Act grants fewer exemptions from seizure than the Civil Procedure Act and an innocent third party i.e. a Hire Purchase Company is more likely to lose its goods to a distraining landlord than to an execution creditor.

This is a complicated area of the law not strictly within our terms of reference but there has to be a case for the powers of an "Auctioneer" to be

identical whether he is distraining for rent or executing for a money decree and for the objection proceedings arising from distress or execution to follow the same or very similar procedure.

A combination of section 44 (i) (ii) Civil Procedure Act and Section 16 (a), (b), (c), (d), (e), (f), (g), (h), (i) Distress for Rent would seem to meet the general case if coupled with the repeal of Section 19 (4) (a) but further study is necessary before such amendments are made.

(ii) Civil Procedure Act itself needs to be brought up to date:—

(a) Section 44 (1) (ii) (a)—“Tools of artisans”

In our respectful view, this Section should be extended to include the basic minimum equipment for an office. The whole object of exempting the tools of artisans was not to kill the goose that laid the golden egg so that a carpenter or a goldsmith could continue to earn their livelihood. There seems to be no logic in not extending the same principle to the very many people in Kenya today who earn their living by the provision of services from an office.

(b) Section 44 (1) (ii) (b)—The exemption of livestock and implements not exceeding KSh. 10,000 in value clearly needs to be reviewed.

(c) Section 44 (1) (iii)—Books of account

In the modern age, some people still retain books of account but a great deal of information is now kept mechanically or electronically. Accordingly, it is our view that computers should not be attachable unless the Auctioneer has first given the debtor during the grace period referred to hereafter an opportunity to copy all the information from the hard disk either on to floppy disks or to print outs.

Recommendation Number 6:

We recommend that Auctioneers should except in the case of perishable goods give the debtor a grace period before the goods are removed as follows:—

(a) Livestock 48 hours

(b) Other movable property 7 days

Provision for these grace periods has been drafted into Part III of the Auctioneers Rules appended to this Report but it will be necessary for the Rules Committee to consider minor amendments inter alia to Order 21 Rules 38, 39, 40, 46, 60, 61 and 62. Civil Procedure Rules]

(2) The Law of Contract Act (Chapter 23):—

In section 3 (4) by deleting “public auction” and by inserting “public auction by a licensed Auctioneer”.

(3) The Chattels Transfer Act (Chapter 28):—

In regulation 7 of the Third Schedule by deleting “public auction” and inserting “public auction by a licensed auctioneer”.

(4) The Disposal of Uncollected Goods Act (Chapter 38):—

[No amendments are suggested but we have left this heading in because sections 7 (3) and 8 (3) of this Act do raise the question of whether a “good title” is obtained by a purchaser at an auction. This is a matter that may require further consideration.]

(5) The Distress for Rent Act (Chapter 293):—

[Although not within our brief, we should comment that the Act is badly drafted and not well understood by a majority of Kenyans. There is a case to be made for distress for rent only to be available between relatively sophisticated landlords and tenants where for example the tenant is paying a monthly rent of not less than KSh. 20,000.]

Despite its many draw-backs however the extra-judicial remedy of distress does save the courts a great deal of work and to repeal the Act would add to the burdens of an already over burdened judicial system.

Subject to these comments we have proceeded on the basis that the Act will remain in force.]

- (i) By deleting “bailiff” wherever it appears and by inserting “licensed Auctioneer”.

[The word “bailiff” is very old fashioned and although well understood by lawyers is not understood by the Kenya public at large. We consider the word “bailiff” should be deleted wherever it appears in the Distress for Rent Act and that it should be replaced with “licensed auctioneer”.]

- (ii) In section 2 by deleting the definition of “approved valuer” and by inserting:—

“approved valuer” means a licensed valuer under the Valuers Act (Chapter 532) or a licensed Auctioneer under this Act other than the Auctioneer carrying out the distress or anyone who employs him or is employed by him.

“auctioneer” means a licensed auctioneer having the class of license authorizing him to levy distress for rent.

- (iii) In section 3 (1) by deleting “Subject to the provisions of this Act” and by inserting “Subject to the provisions of this Act and any other written law”.
- (iv) In section 4 (1) by deleting “ten days” and by inserting “fourteen days”.
- (v) In section 4 (2) by deleting “the ten days” and by inserting “seven days after the distraint”.

By deleting "public auction" and by inserting "public auction by an auctioneer".

- (vi) In section 4 (3) by deleting "the ten days notice" and by inserting "seven days after the distraint".
- (vii) In section 4 (4) by deleting "ten days" and by inserting "fourteen days".
- (viii) In section 6 (1) by deleting "contract may seize" and by inserting "contract may instruct an auctioneer to seize".

In section 6 (1) by deleting "ten days" and by inserting "fourteen days".

- (ix) In section 9 by deleting "goods or chattels take and seize" and by inserting "goods or chattels, instruct an auctioneer to take and seize".

In Section 9 proviso by deleting "landlord or lessor or other person entitled to arrears of rent" and by inserting "an auctioneer".

- (x) In section 11 by deleting "the landlord or lessor or his auctioneer (first calling to his assistance a police officer not below the rank of Assistant Inspector, who shall aid and assist therein, and, in case of a dwelling-house, oath being first also made before a magistrate empowered to hold a subordinate court or before a justice of the peace of a reasonable ground to suspect that the goods or chattels are therein)" and by inserting "the landlord or lessor through his auctioneer".

[We propose deleting the reference to police assistance in the Distress for Rent Act, and putting the Rules relating to police assistance in the Auctioneers Rules.]

- (xi) In section 12 (1) by deleting "A lessor or landlord or his auctioneer" and by inserting "A lessor or landlord through an auctioneer".

In section 12 (1) by deleting "the lessor or landlord hires or otherwise" and by inserting "the lessor or landlord or an auctioneer hires or otherwise".

In section 12 (1) by deleting "provided by section 4" and by inserting "provided by law".

- (xii) In section 15 by deleting "and no more".
- (xiii) In section 18 by deleting the whole section.
- (xiv) In section 25 (1) by deleting "by the landlord".

37. The Registered Land Act (Chapter 300):—

in section 77 (1) by deleting “public auction” where it occurs and by inserting “public auction by a licensed auctioneer”.

38. The Agricultural Finance Corporation Act (Chapter 323):—

in section 33 (1) by deleting “public auction” and by inserting “public auction by a licensed auctioneer”.

in section 33 (2) by deleting “public auction” and by inserting “public auction by a licensed auctioneer”.

in section 33 (4) by deleting “twenty-one” days and by inserting “thirty days”.

39. The Pawnbrokers Act (Chapter 529)—

in section 15 (1) by deleting “public auction” and by inserting “public auction by a licensed auctioneer”.

in section 15 (2) by deleting “public auction” and by inserting “public auction by a licensed auctioneer”.

40. The Estate Agents Act (Chapter 533)—

in section 2 (3) by adding a new sub-clause (f)—“(f) by a licensed Auctioneer selling immovable property or any interest therein by auction”.

41. The Chief Justice may make rules for the better implementation of the purposes of this Act and in particular providing for:—

- (a) the manner of issue, amendment, renewal, revocation and suspension of licences;
- (b) the duties of Auctioneers when repossessing, attaching, storing and selling property under any law or contract;
- (c) subject to any other written law, the duties of Auctioneers when acting as officers of the Court;
- (d) the keeping by Auctioneers of accounts;
- (e) the manner of disciplining Auctioneers;
- (f) the fees payable by Auctioneers and the remuneration of Auctioneers;
- (g) the training of Auctioneers and the fees payable therefor.

SUBSIDIARY LEGISLATION

Rules under section 41

THE AUCTIONEERS RULES ARRANGEMENT OF RULES

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Rule

- 1—Citation.
- 2—Interpretation.

PART II—LICENSING AND IDENTITY

- 3—Application for licence.
- 4—Issuance of Identity Card to Auctioneers.

PART III—ATTACHMENT AND SALES

- 5—Application of Part III.
- 6—Register of warrants and letters of instruction.
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- 8—Insurance.
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- 10—Independent Valuation of goods attached
- 11—Contents of court warrant or letter of instruction.
- 12—Movables other than perishable goods and livestock.
- 13—Perishables and livestock.
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PART IV—ACCOUNTS

- 19—Maintenance of client account.
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- 32—Form of complaint.
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- 34—Formal order by Board on dismissing a complaint.
- 35—Fixing date for hearing of a complaint.
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- 37—Admission of documents.
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- 46—Power to award costs.
- 47—Record of proceedings before the Board.
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- 49—Service of notice or documents.
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51—Extension of time.

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PART VI—OFFENCES

53—Non-compliance of these Rules by an Auctioneer.

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PART VII—FEES

55—Payment of fees.

PART VIII—REMUNERATION

56—Fees and disbursements payable to an auctioneer.

THE AUCTIONEERS RULES

THE AUCTIONEERS RULES

PART I—PRELIMINARY

Citation.

1. These Rules shall be cited as the Auctioneers Rules.

Interpretation.

2. In these Rules:

Words defined in the Act shall have the same meaning in these Rules.

“The Act” means the Auctioneers Act;

“accountants certificate” means the certificate provided for by these Rules;

“appendix” means the Appendix to these Rules;

“client” means any person on whose account an Auctioneer holds or receives client’s money.

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

“client’s 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 an Auctioneer or, in connection with his practice as an Auctioneer as 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; nor

- (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, trustee of a will or settlement, trustee in bankruptcy, receiver or liquidator.

PART II—LICENSING AND IDENTITY

3. (1) An application for an “A” Licence made under sections 8 and 9 of the Act shall be in Licensing Form licence Number I in the Appendix and shall be accompanied by the following—

Application
for a licence.

- (a) an application fee of KSh. 1,000 or such higher fee as the Chief Justice may prescribe;
- (b) (i) a certificate of good conduct from the Criminal Investigation Department;
- (ii) a recommendation on Licensing Form Number 2 in the Appendix from the area Magistrate and the Auctioneer(s) under whom the Applicant has had experience for the two (2) years prior to the application;
- (iii) a recommendation on Licensing Form Number 3 in the Appendix from either a Religious Leader or the Location Chief of the Area of the Applicant’s residence or an Advocate of at least ten (10) years standing.
- (c) evidence that the Applicant has four (4) “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 KSh. 100,000 or a guarantee of KSh. 100,000 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 (3) 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 KSh. 500,000 or such higher amounts as the Chief Justice shall 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 (3) years experience with a reputable firm of Auctioneers.

(2) An application for a "B" Licence made under section 8 of the Act shall in addition to the requirements stated in rule 3 (I) (b) to (e) be accompanied by—

- (a) an application fee of KSh. 1,000 or such higher fee as the Chief Justice may prescribe;
- (b) evidence of the Applicant having held an "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 KSh. 1,000,000 and for goods in trust for a minimum sum of KSh. 500,000 or such higher amounts as the Chief Justice shall prescribe.

Issuance of
Identity card
to Auctioneers.

4. At the time of issuing a licence the Board shall also issue an identity card to the licensee under section 10 (5) of the Act such identity card to be in such form with such safeguards as to validity and against counterfeiting as the Board may from time to time think fit.

PART III—ATTACHMENTS AND SALES

Register of
warrants and
letters of
instructions.

5. 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; this part shall apply unless so provided by any other written law or unless the Court otherwise directs under the Civil Procedure Rules: a letter of instruction shall be in the form prescribed in Sale Form I in the Appendix or as near thereto as circumstances permit.

[Throughout this part of these Rules we have some difficulty where they impinge upon the Civil Procedure Rules. It needs to be borne in mind that much of the drafting in those rules is over a century old and has been tinkered with from time to time to meet specific problems. It is surprising that it works as well as it does but not surprising that old-fashioned words like "Proclamation" are still used although they mean little to the ordinary Kenyan. Our terms of reference do not extend to amendments to the Civil Procedure Rules but we have taken the liberty of suggesting some simplifications so that sales by Auctioneers of movable and immovable property by court order or out of court all follow essentially the same procedure. The exact details of how to achieve this object will need to be approved by the Rules Committees].

6. An Auctioneer shall keep a register of all warrants and letters of instruction passed to him and shall record therein—

- (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 his 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 itemized inventory of the property to be sold showing the value to be placed on each lot;
- (g) the amount realized 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. The debtor shall pay the charges of the Auctioneer, but if the debtor cannot be traced or has no goods upon which execution can be levied or the sale proceeds are

Payment of
Auctioneers
Charges.

insufficient to cover the same, then the creditor shall pay those charges or the deficiency thereof.

Insurance.

8. (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 thereto the Auctioneer 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, 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 the fees and costs therefor and the payment thereof 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 and the cost thereof and may request the court to fix the fees and costs therefor and the payment thereof in advance or as the court may think just such fees and costs being in addition to those provided for in these Rules.

Police
assistance.

9. Where an Auctioneer has reasonable cause to believe that—

- (1) he may have to break any door of any premises where goods may be seized or repossessed; or
- (2) he may be subject to resistance or intimidation by the debtor or others;
- (3) a breach of the peace is likely consequent upon the seizure, repossession or attempted seizure or repossession of any property;

the Auctioneer shall request assistance of the nearest police station which shall with due expedition provide a police escort to the Auctioneer to enable him to carry out his duties

peacefully upon payment by the Auctioneer of any necessary charges.

10. 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.

Independent valuation of goods attached.

11. A court warrant or letter of instruction must include:

Contents of court warrant or letter of instruction.

- (1) Movables—including perishables and livestock—
- (a) 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;
 - (b) person against whom the decree is to be executed;
 - (c) exact location of goods;
 - (d) person to point out the goods;
 - (e) where ascertainable a list of the goods to be attached or repossessed;
 - (f) where appropriate reserve prices or where there are to be no reserves, a record of the reasons for not selling subject to reserves;

[Note that the present form of court warrant is Form Number 25 Appendix D to the Civil Procedure Rules but we think that after discussion with the Rules Committee a single form along the lines of the letter of instruction Sale Form 1 at the end of these Rules could be prepared to cover both court sales and sales out of court.]

(2) Immovable property:

- (a) As in (a) to (e) in Sub-rule 1 hereof and in addition thereto.
- (b) Land reference number, file number, plot number, flat number-as the case may be.
- (c) Area in hectares or in square metres.
- (d) User and any restriction by statute or otherwise on the disposition of the property or any interest therein.
- (e) Tenure and in the case of leasehold particulars of the landlord and the annual land rent.

- (f) Location and in the case of land situated within a township or municipality, the amount of the most recently available annual site value tax.
- (g) Accurate description of improvements and developments.
- (h) Names and addresses of encumbrancers on the title together with—
 - (i) the estimated amount due to any encumbrancer;
 - (ii) the estimated amount of arrears of land rent rates and taxes.
- (i) The names addresses and titles of any persons in possession of the property to be sold or any part thereof.
- (j) Reserve price for each separate piece of land based on a professional valuation carried out not more than twelve (12) months prior to the proposed sale.

Movables
other than
perishable
good and
livestock.

12. (1) Upon receipt of a court warrant or letter of instruction the Auctioneer shall in the 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 where applicable in the prescribed form 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 or where any person refuses to sign such inventory the Auctioneer shall sign a certificate to that effect;

[The only form at present prescribed is for Court sales and is Form Number 27 Appendix D to the Civil Procedure Rules by virtue of Order 21 Rule 61 (6). We think that form needs to be re-drafted to reflect the grace period of seven (7) days which we recommend and to cover both Court sales and sales out of Court. We have prepared a draft of such a form which is appended as Sale Form 2 for consideration by the Rules Committee. We have aimed to produce one form which will cover both sales by the Court and sales out of Court.]

- (c) in writing, give to the owner of the goods a grace period of seven (7) days 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 grace period 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 auction thereof;
- (f) arrange advertisement within seven (7) days from the date of removal of the goods and arrange sale not earlier than seven (7) days after the first newspaper advertisement and not later than fourteen (14) days thereafter;
- (g) not remove any goods under the proclamation until the expiry of the grace period.

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

Perishables
and
livestock.

- (a) record the court warrant or letter of instruction in the Register;
- (b) prepare a proclamation where applicable in the prescribed form 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 where any person refuses to sign such inventory the Auctioneer shall sign a certificate to that effect;

[We make the same comment as Rule 12 (b) hereof.]

- (c) give in writing to the owner of the goods a grace period of forty-eight (48) hours 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 grace period without payment remove the goods;
- (e) ensure safe storage of the goods pending auction thereof;

Non-removal
or alteration
of attached
goods.

(f) arrange immediate advertisement and sale;

14. No person shall remove, alter, damage, substitute or alienate any goods comprised in the proclamation until they are redeemed by payment in full of the amount in the court warrant or letter of instruction or such lesser amount as the creditor or his advocate shall agree in writing.

Immovable
property.

15. 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 indicating the value of each property to be sold.

[The only Form at present prescribed is for Court sales and is Form Number 27 Appendix D Civil Procedure Rules by virtue of Order 21 Rule 61. We think that the form needs to be redrafted to reflect the grace period either of thirty (30) days as already provided in Order 21 Rule 62 or the more generous forty-five (45) days which we recommend and to cover both Court sales and sales out of Court.]

(c) locate the property and serve the Notification of Sale on the property and on the registered owner thereof or an adult member of his family residing or working with him or where any 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 grace period of not less than forty-five (45) 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 grace period without payment arrange sale of the property not earlier than fourteen (14) days after the first newspaper advertisement.

Advertisement.

16. (1) An advertisement by an Auctioneer shall in addition to any other matter required by law or 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 whether or not they are to be sold with or without reserve;
- (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 whether or not they are to be sold with or without reserve;
- (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. (1) Subject to Order 21 Rules 62, 63, 65, 66, 68 and 69 of the Civil Procedure Rules a public auction shall take place—

Auction.

- (i) 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
- (ii) in other sales between the hours of 10.00 a.m. and 10.00 p.m.;
and in either event—
- (iii) 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 thereon.

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

Proceeds of sale.

18. (1) Payments by purchasers at a forced sale shall be in the form of cash or bankers cheque.

(2) Payments by purchasers in all other cases shall be in such form as the Auctioneer shall think fit.

(3) On receipt of the proceeds of sale the Auctioneer shall issue a receipt therefor 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 itemized account in the case of movable property within fifteen (15) days of the sale and in the case of immovable property as provided in Order 21 Rule 74 Civil Procedure Rules.

PART IV—ACCOUNTS

Maintenance.

19. (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 Rule 20 (1) (b) he is entitled to split but does not split.

(3) An Auctioneer need not pay into a clients account client's money held or received by him which—

(a) is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to a court; or

(b) is received by him in the form of a cheque or draft and is, without delay, 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 only pay into a client's account money which he is by these Rules permitted or required to pay in.

20. (1) Where an Auctioneer holds or receives a cheque or draft which includes clients money—

Client
account.

(a) he may where practicable split the cheque or draft and, if he does so, he shall deal with each part thereof 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 client's account.

(2) Money which is not client's money but which is paid into a client's account, other than under Rule 19 (2) (a) shall be paid out as soon as reasonably possible.

21. (1) Subject to Rule 22 an Auctioneer may withdraw from a client's account—

Splitting
cheques and
drafts.

(a) money properly required for payment to a client or a court;

(b) money properly required for a payment authorized by a court or client;

(c) money properly required for or towards payment of the Auctioneers charges 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 client's money paid into the account under Rule 19 (2) (c).

(2) A cheque drawn upon a client's account shall bear on its face the words "client's account".

(3) An Auctioneer shall not withdraw from a client's 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.

(4) No money shall be withdrawn from a client's account under any of sub-paragraphs (c), (d), (e) and (f) of paragraph (1) except by a cheque drawn in favour of the Auctioneer.

(5) No money shall be withdrawn from a client's account other than in accordance with this rule.

Books of
account.

22. (1) An Auctioneer shall keep properly maintained account books of account showing—

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

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

- (a) a manual cash book for office and client's account;
- (b) a cash book and a ledger each of which shall record:
 - (i) every transaction involving client's money, or other money dealt with by the Auctioneer through a client's 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 clause 2 (a) hereof a cash book or ledger kept under this rule may be a loose leaf book or may consist of cards or other permanent records necessary for the operation of a mechanical or electronic system of book-keeping.

(4) The details required under paragraph (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 of which is ruled with two principal money columns on each side.

23. An Auctioneer shall preserve for at least six (6) years from the date of the last entry therein all books of account and accounting records in mechanical or electronic form required to be kept by him under Rule 22.

Preservation of records.

24. 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 thereof to the Board, together with a written report on the circumstances.

Reporting of record lost or destroyed.

25. 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.

Accountant's Certificate.

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

Who may not give an Accountant's certificate.

- (a) he has at any time during the account period or subsequently 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 paragraph (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 of professional misconduct;
 - (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.

Procedure on
examination
of accounts.

27. 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 client's account is kept;
- (c) make a general test examination of the bank pass 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 account; and
 - (ii) the balance standing to the credit of the client account.

Dispensation
of
Rule 25.

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

Commencement
of an
accounting
period.

29. 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 account's certificate has been delivered;
- (b) cover not less than twelve (12) months;
- (c) terminate not more than three (3) 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.

Accounting
period.

30. (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, where an Auctioneer retires from his business and is obliged to deliver a final accountant's certificate, end on the date when he last held client's money and may last less than twelve (12) months.

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

Separate
accounting
period.

[*Note.*—is this advisable: how about separate accounting records for each place of business.]

PART V—DISCIPLINE

32. A complaint to the Board under Section 19 of the Act shall be made by way of the affidavit in Disciplinary Form Number 1 in the Appendix:

Form of
Complaint.

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

Fee for
complaint.

34. If a complaint made to the Board is dismissed under the proviso to Section 19 (3) of the Act, the Board shall, if so required by the complainant or the Auctioneer to whom the complaint relates, make a formal order dismissing the complaint.

Formal
Auctioneer
order by Board
dismissing a
complaint.

35. In case of a complaint against an Auctioneer the Board shall fix a day for the hearing, and the Executive Secretary shall give notice thereof to each party to the proceedings not less than twenty-one (21) 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.

Fixing date
for hearing
of a
complaint.

36. The notice of hearing—

Notice of
hearing.

(a) shall be in Disciplinary Form Number 2 in the Appendix 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 (14) days before the day fixed for the hearing, a list of all documents on 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 of these Rules, any other charge or ground which may become apparent at the hearing and which fairly arises from the matters set out in the complaint.

Admission
of documents.

37. (1) Any party may by notice in writing, at any time not later than nine (9) days before the day fixed for the hearing, 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 (6) 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 such other party refuses or neglects to give notice of non-admission within the time prescribed in paragraph (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 paragraph (1), and the document is proved at the hearing, the costs of proving the document 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 Rule 37 (1) the Board may disallow the costs of proving the document.

Inspection
of
documents.

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

Hearing of
complaints
to be in
public.

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

Failure to
appear
at hearing.

40. If any party fails to appear at the 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.

Evidence by
affidavit.

41. 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. 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. The Board may of 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. The Board may, in its discretion and after giving the parties concerned an opportunity to be heard, order the consolidation of the hearing of any proceedings before it.
45. 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. Upon the hearing or determination of any complaint the Board may, in the case of a complaint against an Auctioneer, without finding any professional misconduct proved against the Auctioneer nevertheless order any party to pay the costs of proceedings if, having regard to his conduct and to all the circumstances of the case, the Board so thinks fit.
47. The Chairman of the Board shall take or cause to be taken a note of all proceedings before the Board, or may order that the record of any proceedings before it shall be taken by shorthand note or any electronic or mechanical means.
48. Any party to proceedings before the Board shall be entitled to inspect the record or transcript thereof, and any party entitled to be heard in any appeal filed from any 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 from time to time direct.

Withdrawal
of complaint.

Adjournment
of hearing.

Consolidation
of proceedings.

Amendment
of complaints.

Power to
award costs.

Record of
proceedings
before the
Board.

Inspection
of record
of
proceedings.

Service of notice or document.

49. Service of any 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.

Discretion of the Board to dispense with the requirements of these Rules.

50. 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.

Extension of time.

51. 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.

Witness Summons.

52. A witness summons issued under Section 19 (4) of the Act shall be in Discipline Form 3 in the Appendix.

PART VI—OFFENCES

Non-compliance of these Rules by an Auctioneer.

53. An Auctioneer who fails to comply with any one of these Rules without lawful excuse shall be guilty of an offence.

Penalty.

54. A person who commits an offence under these Rules for which no other penalty is prescribed shall be liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment not exceeding one (1) year or to both such fine and imprisonment.

PART VII—FEES

Payment of fees.

55. The following fees shall be payable to the Board—

- (1) (a) Upon application for the grant of an "A" licence: KSh. 1,000.
(b) Upon application for the grant of a "B" licence: KSh. 1,000.
- (2) (a) Upon application for the renewal of an "A" licence: KSh. 500.
(b) Upon application for the renewal of a "B" licence: KSh. 500.
- (3) (a) Upon the issue of an "A" licence: KSh. 5,000.
(b) Upon the issue of a "B" licence: KSh. 7,500.
- (4) (a) Upon application for a special licence KSh. 1,000.

- (b) Upon the issue of a special licence KSh. 2,000.
- (5) (a) Upon application for the amendment of any licence: KSh. 1,000.
- (b) Upon application for the issue of a duplicate of any licence: KSh. 1,000.
- (c) Upon the issue, renewal, amendment or replacement of an identity card: KSh. 1,000.
- (6) To inspect the register of licences: KSh. 100.
- (7) Upon the filing of a complaint with the Board: KSh. 500.

PART VIII—REMUNERATION

56. Except as may be provided by any other written law or by contract:-

Fees and disbursements payable to an Auctioneer.

(1) The following fees payable to the Auctioneer for the attachment, repossession and sale of movable and immovable property under court warrants or letters of instructions shall be chargeable 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 therewith within the monetary jurisdiction of the High Court;

a registrar as defined in the Civil Procedure Rules may on the application of any party to the dispute assess the fees 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 sub-rules (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 seven (7) days of the decision of the registrar or magistrate.

(6) The fees of a licensed Auctioneer upon attachment seizure, repossession and sale shall be as follows:

(a) Upon receipt of a warrant or letter of instruction in respect of movable or immovable property KSh. 500

(b) Where there is no property found to attach, or where property to the value of KSh. 2,000 or less is found KSh. 2,000

(c) Upon attachment or repossession of movable property the following charges may be levied based upon the value placed on the items attached or repossessed as per itemized inventory (or upon the decretal amount) whichever is less:

	<i>Per cent</i>
KSh. 2,001 to 50,000	5
KSh. 50,001 to 100,000	3
Over 100,000	1.5

(d) In the event of the amount for which property is to be attached or repossessed being tendered to the Auctioneer before any movable property is attached or repossessed he shall be entitled to a fee of KSh. 2,000 and his out-of-pocket expenses, if any.

(e) In the event of an attachment or repossession by an Auctioneer of movable property being stayed or otherwise postponed or raised or money tendered any time after attachment or repossession but before sale, he shall be entitled to the attaching or repossessing charges in addition to his reasonable out-of-pocket expenses.

(f) Upon sale of movable property the following charges may be levied, based upon the amount realized at the sale—

	<i>Per cent</i>
KSh. 0 to 2,000	10
KSh. 2,001 to 10,000	7.5
Over KSh. 10,000	5

[This scale is essentially that provided at present in the Auctioneers Act with the brackets slightly widened.]

(g) For storing movable property the Auctioneer may claim one-quarter per centum per day of the value placed by him upon the property commencing on the day of removal with a maximum of K. KSh. 500 per day; but in special cases the Court may increase or decrease the charges.

(h) Upon taking possession of immovable property KSh. 2,000

(i) Upon sale of immovable property, the following charges may be levied, based upon the amount realized at the sale:

	<i>Per cent</i>
KSh. 0 to 30,000	5
KSh. 30,001 to 600,000	2.5
KSh. Over 600,000	1.25

[This scale is that provided by the Estate Agents Act (Chapter 533) which we consider fair.]

(j) Notwithstanding anything herein contained upon the attachment and sale of livestock ten (10%) per cent based upon the amount realised at the sale.

(k) If after the sale has been advertised immovable property is withdrawn from the sale or the sale is stayed or otherwise postponed then the licensed Auctioneer shall be entitled to one-half of the fee to which he would have been entitled had the property been sold for an amount equal to the decretal amount or to the reserve price thereof whichever is the less plus all reasonable disbursements.

(l) For taking an inventory of, or transporting movable property and for advertising and insuring movable or immovable property, the licensed Auctioneer shall be awarded such sum as the Court may consider reasonable.

(m) For evicting a person in possession of premises by executing a court order or otherwise:

(i) of residential or commercial premises:

(a) On premises of 15 square metres or less of internal area KSh. 5,000.

(b) On premises of more than 15 square metres of internal area KSh. 10,000.
(ii) of agricultural premises

(a) On premises of 5,000 square metres in area or less KSh. 5,000.

(b) On premises of more than KSh. 5,000 square metres .. KSh. 10,000.

(n) Travelling expenses by car may be allowed upon at three times the scale for the time being prescribed for Government officers.

[We are aware that Government rates have for long been much lower than a fair commercial rate.]

(o) (i) The Court upon giving the parties the opportunity to be heard may increase the fees allowed to a licensed Auctioneer under this Schedule.

(ii) In exercising its discretion under this paragraph the Court shall have regard to all relevant circumstances of the case, including—

(a) the complexity and difficulty or otherwise of the work required to be done; and

(b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by the licensed Auctioneer.

REPUBLIC OF KENYA

THE AUCTIONEER'S ACT—CAP.

APPLICATION FOR GRANT OF LICENCE

Note:—To be submitted in duplicate to the Chairman, the Auctioneer's 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 of the Applicant:
3. Date of Birth or Approximate Age:
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 resident:
- Name of the Area Chief:
8. Name of the Bank:
- Branch: Account Number

PART TWO

9. Have you been convicted of any criminal offences? If so, State the charge:

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 been declared Bankrupt?
-

PART THREE

14. (i) Secondary School attended:
- (ii) Qualification attained in 14 (i)
- (iii) Any further training:
- (iv) Qualification attained in 14 (ii)
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 certificate of good conduct from the Criminal Investigation Department;
- (ii) a recommendation on Form Number 2 of Appendix from the Area Magistrate and the Auctioneer whom the Applicant has had experience for the two (2) years preceding the application;
- (iii) a recommendation on Form Number 3 of Appendix from either a Religious Leader or a location Chief of the Area of the Applicant's residence or 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 KSh. 500,000
- (f) A cash deposit of KSh. 100,000 or a Guarantee of KShs. 100,000 from a Bank or Insurance Company properly executed and approved by the Board for the due performance by the Auctioneer of this 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 Auctioneer's Act which reads; "A person who knowingly makes a false statement in connection with an application for the grant, renewal or amendment of licence shall be guilty of an offence."

20. Pursuant to Rule 3 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 NUMBER 2

REPUBLIC OF KENYA

THE AUCTIONEER'S ACT—CAP.

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 or 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)

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 worked:
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

REPUBLIC OF KENYA

THE AUCTIONEER'S ACT—CAP.

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:
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.

Signature:

Stamp:

Date:

COMPLAINT AGAINST AN AUCTIONEER

(Before the Auctioneer's Licensing Board Established under the Auctioneers Act)

MISCELLANEOUS CAUSE NUMBER OF 19.....

In the Matter of An Auctioneer

and

In the Matter of the Auctioneers Act.

To the Secretary of the Auctioneer's Licensing Board.

I.(i) * of

..... make oath and say as follows:

1. I make a complaint, on the grounds set out below, against the conduct of (ii)† of an Auctioneer

2. (Here state the fact of the matter and 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
....., 19..

Before me,

.....
Commissioner of Oaths or Magistrate

NOTE.

*Insert full name: address and description of complainant.

†Insert full name and last known postal address of Auctioneer.

NOTICE OF HEARING

(Before the Auctioneer's Licensing Board established under the Auctioneers Act)

DISCIPLINARY CAUSE NUMBER OF 19.....

In the Matter of (i) *

and

In the Matter of the Auctioneers Act, Cap.

To:

of

NOTICE is hereby given THAT—

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

of

to the Auctioneers Licensing Board.

2. The hearing of the said complaint will take place on the

..... day of 19.....

at to'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 to 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 and to which your attention is directed. 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 ,19.....

In the name of the Auctioneers Licensing Board

Copy to: Executive Secretary

.....

Complainant
Applicant

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

In the name of the Auctioneer's Licensing Board

.....

.....
Executive Secretary

NOTE:

*Insert the full names of the Auctioneer.

WITNESS SUMMONS

(Before the Auctioneer's Licensing Board established under the Auctioneers Act, Cap.)

DISCIPLINARY CAUSE NUMBER OF 19.....

In the Matter of an Auctioneer and

In the Matter of the Auctioneers Act, Cap.

You are required to attend before the Auctioneers Licensing Board at on day of 19....., 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)

AND herein fail not.

Given under my hand at Nairobi this day of ,19

In the name of the Auctioneers Licensing Board

Executive Secretary

To

.....
.....
.....

THE AUCTIONEERS ACT
(Cap. Rule 5)

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 authorized:

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 costs: KSh.

(b) Estimated Auctioneer's fees: KSh.

8. Reserve prices or reason for selling without reserve:

.....
.....

9. Advertising instructions/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 in paragraph 4 by public auction at the best price obtainable subject to reserves in paragraph 8.*
- (iii) Hereby agree to indemnify you and keep you indemnified against all costs, damages, 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.

*Delete as appropriate.

PROCLAMATION OF ATTACHMENT/REPOSSESSION/DISTRAINT OF MOVABLE PROPERTY

1. Auctioneers Name: Tel:
 P. O. Box Trading As:
 Building Floor Street
2. Creditors Name and Address:
3. Debtors 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/dstraint* as specified overleaf shall be in the meantime have been paid.

SCHEDULE OF MOVABLE PROPERTY

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

*Delete as appropriate.

SCHEDULE OF MOVABLE PROPERTY—(Contd.)

Signature: Judgment Debtor/Agent:

Auctioneer:

Witness if Any

Dated:

AUCTIONEERS CHARGES

	<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/distraint:*	
	<i>Per cent</i>
KSh. 2,000 to KSh. 50,000	5%
KSh. 50,000 to KSh. 100,000	3%
Over KSh. 100,000	1%
TOTAL AUCTIONEERS CHARGES	_____
<i>Add estimated charges for:</i>	
Transport .. ..	.....
Storage .. ..	.....
Advertising .. ..	.....
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.

*Delete as appropriate.

NOTIFICATION OF SALE OF MOVABLE PROPERTY

- 1. Auctioneer's Name:
- Trading as
- P.O. Box Tel:
- Building Floor Street
- 2. Creditors Name and Address:
- 3. Debtors 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 creditor 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>
--------------------	------------------	--------------

SCHEDULE OF MOVABLE PROPERTY—(Contd.)

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.

* Delete as appropriate.

AUCTIONEERS CHARGES

KSh.

Receipt of court warrant or letter of instruction	500
If property less than KSh. 2,000 found	2,000

Fees on attachment/repossession/distraint:*

Per cent

KSh. 2,000 to KSh. 50,000	5%
KSh. 50,000 to KSh. 100,000	3%
Over KSh. 100,000	1%
TOTAL AUCTIONEERS CHARGES	_____

Add estimated charges for:

Transport .. ..	.....
Storage .. ..	.....
Advertising .. ..	.....
Insurance .. ..	.....
Other disbursements .. ..	.....

Fees on Sale:

Per cent

First KSh. 2,000	10%
KSh. 2,001 to KSh. 10,000	7.5%
Over KSh. 10,000	5%

Date Signature of Auctioneer:

Date: Signature of Debtor:

This form must be signed on both sides by the Auctioneer and the Debtor.

*Delete as appropriate.

QUESTIONNAIRE TO LICENSING AUTHORITIES IN RESPECT OF
BROKERS' AND AUCTIONEERS' LICENCES

1. Interviews:

- (a) Is the information provided in the application form adequate?
- (b) What kind of academic professional qualification or experience do you consider when interviewing an application?
- (c) What kind of interviews is the licensee subjected to?
- (d) Is it adequate to assess the suitability of the licensee?
- (e) Would the position be different if there was a written examination?
- (f) Do you determine the financial background of an applicant? If so how?
- (g) Do you inquire about the applicants accounting knowledge?
If not why not?

2. Character:

- (a) Do you normally require letters of recommendation on character before licensing? If so do they provide any assistance.
- (b) (i) What kind of investigative machinery are in place to ensure an applicant is of good conduct?
(ii) Is there anything in particular you look for?

3. Physical Facilities:

- (a) What kind of office and storage facilities do you look for when considering an application?
- (b) Is there a need to set minimum standards for storage facilities?
- (c) What kind of insurance do you require. Is the cover adequate?

4. Licensing Authority:

- (a) Does the Provincial Commissioner deal personally with matters relating to the issuance of Auctioneers' Licence and official brokers licence?
- (b) If not who does he delegate the work to?
- (c) What special knowledge does the person have regard to Auctioneering and official broking?
- (d) Would the licensing be better handled by an individual or by a Board?

(e) Is there need for the two different licensing authorities in respect of the Court Brokers Licence and Auctioneers Licence and Official Brokers Licence?

(f) Is there a need to limit the jurisdiction of Auctioneers?

(g) Give reasons for your answer in (f)

5. Fees Payable:

(a) What fees are charged for an Auctioneers and official brokers licence in your area?

(b) Is this consistent with the Act?

(c) If not explain why?

(d) Is there need to review the fees?

(e) State reasons for your answer in (d)

6. Complaints:

(a) Is there a specific officer who deals with complaints?

(b) What are the main complaints reported against Auctioneers/ Brokers?

(c) Would you attribute the complaints to limitation in qualification, experience or regulations in licensing?

(d) If so what improvements would you suggest?

(e) Is the security/guarantee provided adequate for the kind of complaints reported?

(f) What protection/security would you recommend to safeguard the Public against errant Brokers/Auctioneers?

7. Discipline:

(a) What control do you have over the activities of auctioneers and brokers?

(b) What other controls do you have in regard to auctioneering and broking?

(c) Have you had to use your disciplinary powers hitherto? If so specify.

QUESTIONNAIRE TO FINANCIAL INSTITUTIONS AND LAWYERS

1. Instructions:

- (i) What kind of work do you give to auctioneers, investigators, repossessioners?
- (ii) How do you choose your Auctioneers, investigators, repossessioners?
- (iii) Do you choose them from a retained panel?
- (iv) Do you require an Auctioneer to provide security by way of a Bond?
 - (a) If Yes—elaborate.
 - (b) If No—How do you cover yourself against risk.

2. Sale:

- (i) Do your instructions require representation during sales?
- (ii) Do you normally specify:
 - (a) Mode of sale.
 - (b) Time of sale.
 - (c) Place of sale.
 - (d) Reserve price.
- (iii) How do you determine Reserve Prices?
 - (a) Do you find it a must to have Reserve Prices?
 - (b) If so, what dangers would there be if no Reserve Prices were given to Auctioneers.
- (iv) How do you ensure that the interest of the property owner are catered for?
- (v) Would you consider it appropriate to involve the property owner in the determination of Reserve Prices? If not, Why?
- (vi) What type of problems do you encounter before the sale?
- (vii) What possible solutions would you recommend?

3. Transfers:

- (i) What difficulties do you encounter in the transfer of immovable property to the purchaser?
- (ii) What are the possible solutions to these problems?
 - (a) e.g. Legal—Indicate specific provisions and possible amendments.

- (b) Administrative
- (c) Others.

4. Problems with Sales:

- (i) How are the proceeds of sale handed over and what receipting arrangement do you have?
- (ii) Are proceeds of sales remitted promptly?
- (iii) Where remittance of proceeds of sale are delayed, what actions do you take?
- (iv) Are your actions effective and enforceable?
- (v) Are Auctioneers' charges and commissions reasonable?
- (vi) Is the current schedule of remuneration to Auctioneers, repossessioners, investigators adequate?
- (vii) If not, specify and recommend improvements.

5. Complaints:

- (i) What is the nature of complaints which you receive from the Public in connection with the conduct of Auctioneers?
- (ii) Please indicate possible solutions which may minimize or eradicate these complaints.
- (iii) What recommendations would you make towards the improvement of any specific rules and regulations on the conduct of sales.

6. Courts:

In your response to the foregoing questions, please indicate:

- (i) The role that the courts may play to facilitate fair, and proper auction sales.
- (ii) Whether the existing system of allocation of warrants is satisfactory.
- (iii) Have you had any problems recovering monies deposited with the Courts. Specify?

QUESTIONNAIRE TO AUCTIONEERS/COURT BROKERS REPOSSESSORS, BAILIFFS AND INVESTIGATORS

1. Qualification and Experience:

- (a) What academic qualification do you hold?
- (b) What professional qualification do you hold?
- (c) Did you have any experience relevant to Court Brokering/ Auctioneering before being licensed?
- (d) Explain how (a), (b), and (c) have either been an asset or handicap in performing your duties.
- (e) What would you recommend with regard to (a), (b) and (c)?

2. Jurisdiction:

- (a) Is your area of jurisdiction limited?
 - (i) As an Auctioneer.
 - (ii) As a Court Broker.
 - (iii) Repossessors.
 - (iv) Bailiffs.
 - (v) Investigators.
- (b) State what difficulties you may have encountered through this limitation.
- (c) If not limited explain how you manage the work *vis a vis* your offices/base and countrywide jurisdiction. Repossessors, bailiffs, investigators

3. Related Business:

- (a) State what other business you are involved in other than Court Brokering or Auctioneering, repossessors, bailiff.
- (b) What effect do these other businesses have on your performance as a Court Broker, bailiff, reposessor and investigators.
- (c) What comments do you have on the multiplicity of licences issued to a Broker/Auctioner, bailiff.

4. Instructions:

- (a) Into what categories do your clients fall?
 - (i) Private.
 - (ii) Institutions.
 - (iii) Government.
- (b) What type of instructions do you receive from your clients.
- (c) Are the instructions you receive adequate.

- (d) What steps do you take upon receipt of the instructions.
- (e) What difficulties do you encounter in complying with the said instructions.
- (f) Please provide proposals for improvement of the instructions.

5. Advertisements:

- (a) What mode of advertisement do you use.
- (b) Who determines the mode of advertisement.
- (c) When do you advertise in relation to the sale:
 - (i) For movable properties.
 - (ii) For immovable properties.
- (d) What information is required to be given in the advertisement.
- (e) Who meets the cost for advertisement.
- (f) How do you settle your advertisement costs:
 - (i) On account.
 - (ii) By cash.
 - (iii) Any other method.
- (g) What problems have you encountered in relation to advertising.
- (h) What can be done to improve on the advertisements and Public response to advertisements.

6. Transport:

- (a) What mode of transport do you use when inspecting and selling immovable property.
- (b) What mode of transport do you use when transporting movable assets.
- (c) Who determines the mode of transport to be used.
- (d) Who pays for the transport charges and how do you recover the same.
- (e) How do you base your transport charges.
- (f) What type of insurance cover do you have for goods in transit.
- (g) Please indicate areas of specific problems and possible improvements.

7. Storage:

- (a) What type of assets do you store.
- (b) Where do you store the said assets:
 - (i) What kind of storage facilities do you have?
 - (ii) Give details of the type of building?
- (c) Do you own or do you hire storage facilities.

- (d) How do you determine the length of storage.
 - (i) How do you determine the cost of storage *vis a vis* the value of the item.
- (e) Who pays the storage charges.
- (g) What complaints arise with regard to storage to storage of assets and how do you resolve the same e.g. thefts, damage.
- (h) (i) What problems do you encounter in recovering your transport and storage charges.
 - (ii) What are the possible causes of these problems.
 - (iii) What are the possible solutions to these problems.

8. Sales of Properties:

- (a) What type of sales do you conduct (Private Sale/Public Auctions/ Both).
- (b) What is the general attendance at your public auctions.
- (c) What preparations do you make to ensure the proper conduct of the auction sale before its commencement.
(Catalogue, Announcements, Explanations for conditions of sale etc.)
- (d) Who determines the estimate or reserve price or the value of each item to be sold.
- (e) How do you conduct your public auctions and do you keep records of bidders.
- (f) How do you declare a purchaser.
- (g) What do you do with the property that does not attain the Reserve Price.
- (h) What suggestions can you make for the improvement of auction sales to ensure fair and proper sales in the interest of all parties?
- (i) Do you think there are alternative ways of disposing of assets other than Public Auctions.
If so, consider and recommend.

9. Executions:

- (a) How do you attach or seize property.
- (b) What problems do you encounter in the execution of warrants of attachment/instructions/seizure.
- (c) What suggestions can you make to resolve the problem.
- (d) What legal protection would you need to be put in place to ensure your security in the due performance of your professional duties.

10. Fees and Charges:

- (a) Are the current scales of fees and charges satisfactory.
- (b) If not, indicate areas of improvement.

*APPENDIX 2
TO THE REPORT*

**THE COMPLAINTS COMMISSION
DRAFT ESTIMATE OF EXPENDITURE 1995/96**

HEAD 858

ITEM	TITLE	APPROVED Estimates 1994/95	ESTIMATES 1995/96
000	Personal Emoluments	85,173	112,901
050	House Allowance	12,500	14,000
060	Other Personal Allowances	7,000	8,500
064	Transfer Allowance	100	800
065	Medical Allowance	—	8,000
080	Passage and Leave	3,000	3,500
100	Transport Operating Expenses ..	13,000	15,000
110	Travelling and Accommodation Expenses	1,000	4,500
120	Postal and Telegrams	1,500	2,000
121	Telephone Expenses	14,000	16,000
130	Official Entertainment	1,000	2,000
140	Electricity Expenses	1,000	1,000
141	Water and Conservancy Expenses ..	1,000	1,000
171	Publishing and Printing Expenses ..	1,500	1,000
172	Purchase of Uniforms and Clothing ..	800	1,000
173	Library Expenses	6,000	10,000
174	Purchase of Stationery	6,000	10,000
175	Advertising and Publicity	300	5,000
181	Payment of Rents and Rates (Residential)	36,000	15,000
182	Payment of Rents and Rates (Non-residential)	36,000	36,000
184	Contracted Professional Services ..	500	500
186	Hire of Transport, Plant and Machinery	200	200
190	Miscellaneous Other Charges	3,800	4,000
193	Fees, Commissions and Honoraria ..	3,000	3,000

200	Replacement of Motor Vehicles ..	5,000	70,000
220	Purchase of Plant and Equipment ..	11,000	30,000
250	Maintenance of Plant, Machinery and Equipment	5,000	5,000
295	Minor Alterations and Maintenance Works	—	15,000
	NET EXPENDITURE HEAD 858 ..	<u>247,373</u>	<u>394,101</u>

THE AUCTIONEERS BILL, 1995
ARRANGEMENT OF SECTIONS

Section:

- 1—Short Title.
- 2—Interpretation.
- 3—Prohibition against unlicensed Auctioneers.
- 4—Establishment of Auctioneers Licensing Board.
- 5—Meetings of the Board.
- 6—Functions of the Board.
- 7—Revenue.
- 8—Eligibility for licence.
- 9—Application for grant of licence.
- 10—Conditions applicable to grant of licence.
- 11—Refusal to grant licence.
- 12—Form of licence.
- 13—Duplicate licence.
- 14—Renewal and amendment of licence.
- 15—Fee.
- 16—Duration of licence.
- 17—Licences not transferrable.
- 18—Register of licences.
- 19—Complaints.
- 20—Revocation of licence by the Board.
- 21—Suspension of licence by the Board.
- 22—Penalty.
- 23—Complaint to police.
- 24—Acquittal no bar to discipline.
- 25—Recovery of charges by Auctioneer.
- 26—Revocation or suspension of licence by Court.
- 27—Right of recovery of damages from an Auctioneer.
- 28—Auctions.
- 29—Inherent powers of the Court.
- 30—Misconduct by Auctioneers.
- 31—Transitional and Saving provisions.

- 32—Issuance of licence in special circumstances.
- 33—Repeal of The Court Brokers Act (Cap. 20) and the Auctioneers Act (Cap. 526).
- 34—Amendment of Cap. 23.
- 35—Amendment of Cap. 28.
- 36—Amendment of Cap. 293.
- 37—Amendment of Cap. 300.
- 38—Amendment of Cap. 323.
- 39—Amendment of Cap. 529.
- 40—Amendment of Cap. 533.
- 41—Power to make Rules.

A Bill for

An Act of Parliament to provide for the licensing and control of Auctioneers and for purposes incidental there to and connected therewith

ENACTED by the Parliament of Kenya as follows:

1. This Act may be cited as the Auctioneers Act.
2. In this Act, unless the context otherwise requires—

“Auctioneer” means a person licensed under this Act who carries out, any or all of the following functions—

- (a) attachment and sale of any property under order of the Court or by force of law or contract;
- (b) sells or offers for sale by auction and includes every person who sells or offers for sale any movable or immovable property or any interest therein at any sale where any person becomes or may become the purchaser of the same by competition and being the highest bidder, either by being the sole bidder, or increasing upon the biddings made by others, or decreasing on sums named by the Auctioneer or person acting as Auctioneer, or by any other mode of sale by competition;
- (c) levies distress for rent or distrains under any other written law;
- (d) carries out evictions under an order of court;
- (e) repossesses goods from any person under any law or contract;
- (f) by auction, disposes, sells or offers for sale goods held by any person as bailee under any law or contract,

and includes a firm all of whose partners are licensed under this Act but excludes any sale by auction of coffee or tea.

“Board” means the Auctioneers Licensing Board established under section 4 of this Act;

“Court” means any Court of Kenya of competent jurisdiction;

“Executive Secretary” means the executive secretary appointed under section 4 of this Act;

Short title.

Interpretation.

“licence” means a licence in force under this Act;

“place of business” means each separate building and each separate part of a building at which the business of an Auctioneer is carried on.

Prohibition
against
unlicensed
Auctioneers.

3. (1) Subject to subsection (2), a person who acts as, or who holds himself out as acting as, an Auctioneer without being licensed under this Act shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(2) A court may, for exceptional reasons to be recorded by it in writing, extend the area of operation of an Auctioneer for the purposes of execution of a specified warrant on which the reasons for such extensions have been endorsed in order to facilitate execution in an area in which there is no licensed Auctioneer.

Establishment
of
Auctioneers
Licensing
Board.

4. (1) There is hereby constituted the of Auctioneers Licensing Board:

(2) The Board shall consist of the following licensing persons appointed by the Chief Justice:

- (a) A Resident Magistrate, Senior Resident Magistrate, Principal Magistrate, Senior Principal Magistrate, or Chief Magistrate, who shall be the chairman.
- (b) Two advocates of the High Court of not less than ten (10) years standing one of whom shall, in the absence of the chairman, act as chairman.
- (c) Permanent Secretary Office of the President in charge of internal security or his representative.
- (d) Two persons who have acted as Auctioneers for a period of five years immediately preceding appointment.
- (e) One (1) representative from a Bank or Financial Institution including Agricultural Finance Corporation and Agricultural Development Corporation.
- (f) Five other members appointed as follows:
 - (i) Two to represent Rift Valley, Western and Nyanza Provinces.
 - (ii) One to represent Nairobi and Central Provinces.

(iii) One to represent Coast and North-Eastern Provinces.

(iv) One to represent Eastern Province.

(g) One (1) member of the Kenya Chamber of Commerce and Industry.

(3) A member of the Board shall be appointed for three (3) years but may resign his office by written notice to the Chief Justice. Provided that the Chief Justice may revoke the appointment of any member if in his absolute discretion he considers it proper to do so.

(4) There shall be an Executive Secretary who shall be a magistrate appointed by the Chief Justice:

Provided that the Executive Secretary may resign or his appointment may be revoked by the Chief Justice.

5. (1) Meetings of the Board shall be held at least of once in each quarter and at any other times appointed by the chairman.

Meetings
of
the Board.

(2) The quorum of the Board shall be five (5) except in its disciplinary jurisdiction when the quorum of the Board shall be three (3): in each case one (1) of whom shall be a qualified lawyer.

(3) The Chairman shall have a deliberative and a casting vote.

(4) Subject to this section the Board may regulate its own procedure.

6. The functions of the Board shall be—

Functions
of the Board.

(a) to consider applications for licences and applications to renew or amend licences;

(b) to train monitor and supervise the activities of Auctioneers;

(c) to receive and investigate complaints against Auctioneers;

(d) to conduct disciplinary proceedings against Auctioneers and to impose penalties and to award costs;

(e) to grant, amend, renew, revoke and suspend licences.

7. All moneys received by the Board pursuant to this Act shall be paid into the Consolidated Fund.

Revenue.

8. (1) A person who has attained the age of thirty (30) and is under sixty-five (65) years of age at date of commencement of the licence applied for and is a Kenya citizen shall be eligible to hold a licence under this Act:

Provided that a person who has not attained the age of thirty (30) years may be eligible to hold a licence if he shows to the satisfaction of the Board that he has had at least seven (7) years apprenticeship with a reputable firm of Auctioneers.

(2) (i) A corporation shall not be eligible to hold a licence under this Act.

(ii) Auctioneers shall be entitled to practise in partnership provided that all the partners are licensed under this Act.

(3) Notwithstanding sub-section (1), a person shall not be eligible to hold a licence under this Act if:

(a) (i) he has been convicted in the ten years preceding his application of an offence involving fraud, dishonesty or immorality;

(ii) he has at any time been convicted of an offence under this Act or been disqualified by the Board under this Act.

(b) he is a judge or magistrate or is employed in any capacity as an executive or subordinate officer of a court;

(c) he is a practising advocate, or is employed in any capacity by a practising advocate;

(d) he is a Member of Parliament, councillor, civil servant, member of staff of any local authority or statutory body or parastatal;

(e) he has not completed ten (10) years since his licence was revoked;

(f) his period of disqualification as an Auctioneer by the Board has not expired at the date of commencement of the licence applied for;

(g) he has not paid any fine compensation or costs imposed by the Board due to the Board or any other person at date of application;

(4) A person who obtains a licence knowing that he is not eligible to hold one shall be guilty of an offence and

liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment for a period not exceeding twelve (12) months or to both such fine and imprisonment in addition to any other penalty.

9. (1) Application for a licence shall be made to the Board in the prescribed form and shall identify the place of business and the class of licence in respect of which the licence application is made provided however that the Board may upon application issue a special licence to a person who is not a citizen of Kenya but who by virtue of his special knowledge and experience in Kenya or elsewhere is otherwise qualified as a fit and proper person to conduct the same to hold any auction of a special nature and for that purpose to dispense with the other requirements of eligibility provided in this Act.

Application
for grant
of
licence.

(2) A person who knowingly makes a false statement in connection with an application for the grant, renewal or amendment of a licence shall be guilty of an offence.

(3) Except as may be otherwise provided by law, no auctioneers' licence shall 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 dealings, or sale of, which is prohibited to persons other than those duly licensed, registered or otherwise authorized in that behalf, provided that it shall not be necessary for Auctioneers to take out licences for the sale of liquor or television, radio or video sets or items sold in execution of a court decree or distress for rent.

10. (1) The Board shall not grant a licence unless it is satisfied that the applicant is eligible to hold a licence and that he is a fit and proper person provided that where an applicant proposes to work in the full-time employment of another licensed Auctioneer the Board may dispense with any requirements for secure premises and insurance if such requirements are already met by the employer but nothing in this proviso shall permit a licensed Auctioneer in employment having the benefit of any such dispensation to practise on his own account or as an independent contractor.

Conditions
applicable
to grant of
licence.

(2) For the purpose of satisfying itself as to the eligibility and suitability of an applicant, the Board may make any necessary inquiries and in pursuance thereof may serve a notice in writing on the applicant or any other person requiring him to furnish to the Board any information within such period as the Board may require.

(3) It shall be a condition of the grant of a licence that the applicant shall within ninety (90) days of the said grant nominate not less than two licensed auctioneers of either class jointly to wind up the applicant's auctioneering business if the applicant dies or loses his licence for any reason while carrying on business as sole proprietor or sole surviving partner of an auctioneering business: such nominations may be changed in writing by a licensed auctioneer at any time but any changes shall be notified forthwith to the Board and if an Auctioneer fails to execute such nominations within the time aforesaid his licence shall be suspended until such nominations are executed.

(4) In the event that the persons nominated to wind up the auctioneering business under the foregoing sub-section fail to take action within thirty (30) days of being required by the Board to do so, the Board itself may nominate one (1) or more licensed Auctioneers of any class jointly to do so and the Board may take such further action effectively to assist the nominees to wind up the said business as it shall think fit to do.

(5) Upon the issue of an auctioneering licence, the Board shall also issue to each licence holder an identity card containing the name, address and class of licence in permanent form and such identity card—

- (a) shall be worn prominently by the Auctioneer on all occasions of attachment seizure and sale;
- (b) shall be held by the Auctioneer as incidental at all times to his Auctioneers licence and therefore subject to renewal, amendment, replacement, revocation, suspension and return as part of his licence.

Refusal
to grant
licence.

11. Where the Board refuses to grant a licence it shall serve a notice of refusal, indicating the reasons therefor, on the applicant by registered post or by delivering it to the applicant personally.

Form of
licence.

12. (1) A licence shall be in the form to be determined by the Board and shall include—

- (a) the full names and national identity card number of the person to whom the licence is granted;
- (b) the place of business in respect of which the licence is granted;

- (c) the district or districts to which the licence applies; and
- (d) the date of its expiry, which shall be no later than the thirty-first day of December in each year.

(2) The licence shall be displayed in a conspicuous position within the place of business in respect of which it is granted.

13. If the Board is satisfied that a licence has been lost, destroyed or mutilated, it may, on payment of the prescribed fee, issue a duplicate licence.

Duplicate licence.

14. (1) A licensee who is still eligible under this Act, may, not earlier than three (3) months, nor later than one (1) month, before the date of expiry of his licence, apply to the Board for a renewal thereof.

Renewal and amendment of licence.

(2) Where an application for the renewal of a licence is made by a licensee who is still eligible under this Act, the licence shall remain in force until the application is dealt with unless the licence is suspended or revoked under the provisions of this Act or the Applicant ceases to be eligible.

(3) A licence may be amended, on application to the Board and after payment of the prescribed fee or on the Board's own motion—

- (a) by substituting one place of business for another; or
- (b) by adding or deleting in the licence a district in which the holder is licensed to act; or
- (c) in any other manner that the Board may think fit.

(4) The Board may refuse to renew or amend a licence upon any of the grounds upon which it may refuse to grant a licence or revoke a licence under section 10 or 20 and the provisions of subsection (4) of section 20 shall apply to any refusal to renew or amend.

(5) The licence shall be renewable every calendar year.

15. Where the Board is satisfied as to the eligibility and suitability of an applicant it shall grant or renew or amend a licence on payment of the prescribed fee.

Fee.

16. Subject to this Act—

- (a) licence shall be valid for a period not exceeding twelve (12) months;

Duration of licence.

(b) where the licence is renewed or amended it shall be valid subject to Section 12 (1) of this Act for a period of one (1) year from the date of expiry of the previous licence except in case of amendment the Board may limit the time for which the amendment shall be valid;

(c) where a licence is suspended by the Board under this Act and the suspension is set aside, the licence shall continue to be valid for the period remaining unexpired thereon at the time the suspension took effect.

Licences
not
transferable

17. (1) A licence shall not be transferable.

(2) Upon the death, bankruptcy or other incapacity of a licensee, the persons nominated under section 10, or his personal representative, or trustee in bankruptcy or other person acting on his behalf shall return his licence to the Board and shall also return all warrants, whether executed or unexecuted, to the court which sent them to the licensee.

Register
of licences.

18. (1) The Board shall keep a register, in such form that it determines, of licences granted and shall record therein in respect of each licence:—

(a) the particulars required by section 12;

(b) particulars of any duplicate issued or any amendment of the licence made under sections 13, 14 and 16;

(c) particulars of any revocation or suspension of the licence under sections 19, 20, 21 or 26;

(d) the district or districts to which the licence applies;

(e) any other particulars the Board may require to be recorded.

(2) A person may, during reasonable office hours, and on payment of the prescribed fee, inspect the register of licences.

(3) A person who is:—

(a) a member of the police force, or a public officer, acting in the course of his duty; and

(b) a person authorized in writing by the Board, may inspect the register without payment.

19. (1) A complaint against an 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 person.

(2) Where a person makes a complaint under subsection (1), the complaint shall be by affidavit by himself setting out the allegations of misconduct which appear to arise on the complaint to the Board, accompanied by such fee as may be prescribed.

(3) The Board shall give the Auctioneer against whom the complaint is made an opportunity to file an affidavit in reply 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 (7) 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 such complaint without requiring the Auctioneer to whom the complaint relates to answer any allegations made against him and without hearing the complaint.

(4) For the purposes of any application or complaint made to it under this Part, the Board may administer oaths or affirmations, and the complainant and the 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.

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

(6) The Board may make Rules for regulating the making to the Board, and the hearing and determination by the Board, of applications or complaints under this Part.

(7) After hearing the complaint and the Auctioneer to whom the same relates, if he wishes to be heard, and considering the evidence adduced, the Board may order that the complaint be dismissed or if of the opinion that a case of

misconduct on the part of the Auctioneer has been made out, the Board may order:—

- (a) that such Auctioneer be admonished; or
- (b) that the Auctioneer's licence be suspended for such period as it thinks fit not exceeding six (6) months; or
- (c) that the Auctioneer's licence be revoked; or
- (d) that the class of the Auctioneer's licence be altered from Class B to Class A for such period as it thinks fit; or
- (e) that such Auctioneer do pay a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000); or
- (f) that such Auctioneer do pay compensation not exceeding Kenya Shillings fifty thousand (KSh. 50,000/) to any person damnified by his misconduct; or
- (g) that such Auctioneer be disqualified from eligibility for an Auctioneer's licence or any class thereof for such period as the Board thinks fit; or
- (h) such combination of the above orders as the Board thinks fit.

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

(9) Any order of the Board may be filed with the Court and shall upon service of the notice of filing thereof upon the Auctioneer be enforceable in the same manner as an order of the subordinate Court to the like effect.

(10) For the purposes of this section the quorum of the Board shall be the Chairman or in his absence one of the advocate members of the Board and at least two (2) other members.

(11) Any Auctioneer aggrieved by any order of the Board made under its disciplinary jurisdiction may within thirty (30) days after the receipt by him of written notice of such order, appeal against such order to the High Court by giving notice of appeal to the Registrar thereof and shall file with the Registrar a memorandum setting out his grounds of

appeal within thirty (30) days after the giving by him of such notice of appeal. The decision of the High Court on such appeal shall be final.

20. (1) The Board may revoke a licence if it is satisfied that the licensee made a statement in or in connection with his application for the grant, amendment or renewal of that licence which he knew to be false in any material particular.

Revocation
of licence
by the Board.

(2) The Board shall revoke a licence upon the happening of any event which renders the licensee ineligible to hold a licence.

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

(4) Where the Board has power to revoke a licence it shall give the licensee sufficient opportunity to show cause why the licence should not be revoked.

(5) Where the Board revokes a licence, it shall serve notice of revocation, indicating the reasons therefor, on the licensee personally or by registered post and shall publish a notice in the Gazette and in one local daily newspaper within fourteen (14) days of the date of revocation.

(6) The revocation of the licence shall have effect from the date of service of the notice of revocation which shall be:—

- (a) where the notice is sent by registered post, a date seven days after the date of posting; or
- (b) where the notice is delivered to the holder of the licence personally, the date of delivery; or
- (c) upon publication of the notice whichever is earlier.

(7) Where a licence is revoked, the licensee shall forthwith deliver the licence to the Board and a licensee who, without reasonable excuse, the burden of proving which shall lie on him, fails to do so shall be guilty of an offence and liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment for a period not exceeding twelve (12) months.

21. (1) In addition to its powers under section 19 of this Act, the Board may suspend a licence for a period not exceeding six (6) months:—

Suspension
of licence
by the Board.

- (a) if the licensee is charged with an offence of licence involving fraud, dishonesty or immorality, violence and malicious damage to property;
- (b) if, having received a complaint against the licensee concerning his activities in executing court orders or when distraining, the Board considers it appropriate to suspend the licence pending further investigation of the complaint;
- (c) if the licensee when executing court warrants or distraining has acted in a manner incompatible with his status as an officer of the court.

(2) The Chairman of the Board, if satisfied of the necessity for acting without delay, may for any of the reasons set out in sub-section (I) hereof suspend a licence until the next meeting of the Board but such suspension shall not remain in force for a period exceeding six (6) weeks and the Executive Secretary shall forthwith serve a notice of the suspension indicating the reasons therefor upon the licensee personally or by registered post.

(3) Where the Board suspends a licence it shall serve a notice of suspension, indicating the reasons therefor, upon the licensee personally or by registered post and shall publish a notice in the Gazette and in one local daily newspaper within fourteen (14) days of the date of suspension.

(4) The suspension shall take effect on the day following the date of service of the notice of suspension which shall be:—

- (a) where the notice is sent by registered post, a date seven (7) days after the date of posting; or
- (b) where the notice is delivered to the licensee personally, the date of delivery; or
- (c) upon publication of the notice whichever is earlier.

(5) Before the Board suspends a licence it shall give licensee sufficient opportunity to show cause why the licence should not be suspended.

Penalty.

22. (1) A person who fails to comply with any of the provisions of this Act or the Rules made thereunder shall be guilty of an offence.

(2) A person who commits an offence under this Act or any Rules made thereunder for which no penalty is expressly provided shall be liable to a fine not exceeding Kenya Shillings fifty thousand (KSh. 50,000) or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.

23. Upon the making of a complaint to the police of any offence under this Act, the police shall make necessary investigations and take appropriate action as deemed fit under the law.

Complaints to the police.

24. An Auctioneer may be liable, notwithstanding the fact that he has been acquitted of an offence, to disciplinary proceedings under this Act.

Acquittal no ban to discipline.

25. (1) An Auctioneer making any sale other than a forced sale by auction shall (unless it be agreed otherwise between him and the seller) be entitled to sue for, recover and discharge all sums due in respect of such sale.

Recovery of charges by Auctioneer.

(2) An Auctioneer making any sale other than a forced sale, (unless it be agreed otherwise between him and the seller) shall be liable for the due payment to the seller of the net proceeds of all sales of property within fifteen (15) days from the date of sale of such property.

26. (1) The court imposing any fine under this Act or upon any Auctioneer, or convicting any Auctioneer of any offence in relation to any property entrusted to him for sale or in relation to the proceeds of sale of such property, may, if it shall appear that the offence is of such nature as to require the licence of such Auctioneer to be suspended or revoked make an order to that effect, and the licence shall be suspended or revoked accordingly.

Revocation or suspension of licence.

(2) The court making any order of suspension or revocation of a licence shall forthwith intimate the same to the Board.

27. (1) Subject to the provisions of any other written law any person suffering any special or general damage by the unlawful and improper exercise by an Auctioneer of the powers given to an Auctioneer by law or by court shall be entitled to recover any damages directly suffered by him from the Auctioneer by action:

Right of recovery of damages from an Auctioneer.

Provided that—

(i) nothing in this section shall prevent the Au-

ctioneer claiming contribution or indemnity from any other person;

(ii) nothing in this section shall limit the damages recoverable under any other written law.

Auctions.

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

(2) It shall be stated in the particulars or conditions of sale by auction of any movable or immovable property whether such sale be without reserve or subject to a reserve price, or whether a right to bid is reserved. Where there is a reserve price in a forced sale the lot shall not be sold at the auction at a lower price; in other sales the lot may be sold at a lower price with the consent of the owner thereof.

(3) 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 on his behalf or employed by him to bid at such sale, or for the auctioneer to take knowingly any such bidding provided however if it is stated that the sale will be subject to a right for the seller to bid, it shall be lawful for the seller, or for any one person on his behalf, but not more than one, to bid at any such auction in such manner as he shall think proper.

(4) 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 employed by him to give one bid for each such lot and no more.

(5) If the seller or any person employed by him or on his behalf shall bid at any sale contrary to any of the preceding provisions of this section, any purchaser may refuse to fulfil his purchase, but the highest bona fide bidder shall be entitled, if he shall so elect, to have the immovable or movable property at the price offered by him.

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

(7) A sale by auction of any movable or immovable property is complete when the auctioneer announces its completion by the fall of the hammer notwithstanding any written law to the contrary.

(8) Until the sale is complete any bidder may retract his bid.

(9) Any person who shall knowingly receive or make any bid contrary to any of the provisions of this section or who shall make an accepted bid which he knows or ought in all the circumstances to have known he is unlikely to be able to perform or is fraudulent or is intended to avoid a valid sale of the lot bid for shall be guilty of an offence and in the case of an Auctioneer in addition to any other penalty to have his licence suspended or revoked.

(10) An auction shall take place at the date, time and place advertised and on no other date, time or place.

29. Nothing in this Act shall limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice in any matter it is seized of or is before it.

Inherent powers of the Court.

30. An Auctioneer when executing Court Warrants or by distraining or when seizing or selling any property without the consent of the owner under any law or contract shall at all times act as if he were an officer of the Court and shall not do or omit to do any act or thing incompatible with such status and shall ensure that his servants act in all respects in a similar manner.

Misconduct by Auctioneers.

31. No person shall practise as an auctioneer after 31st December next following the date of the commencement of this Act unless he is licensed under the provisions of this Act provided that an Auctioneer who—

Transitional and saving provisions.

(i) had a licence valid until the 31st December of the previous year;

(ii) being eligible has duly made application for a licence for the ensuing year;

(iii) has not been advised by the Board of the decision of the Board on his application may act as an Auctioneer within the terms of his former licence until the 31st March in the ensuing year but no longer.

32. (1) Any person who has been licensed as an auctioneer under the previous Act for three (3) consecutive years prior to the coming into force of this Act who is otherwise eligible by virtue of good conduct, premises, insurance and bond shall be eligible for a "B" licence.

Issuance of licence in special circumstances.

(2) Any person who has attained the sixty-five (65) years or over and who has been licensed as an auctioneer

under the previous Act for three (3) consecutive years prior to the coming into force of this Act who is otherwise eligible by virtue of good conduct, premises, insurance and bond may be granted a licence until the end of the first full calendar year from the coming into force of this Act.

Repeal of
the Court
Brokers Act
(Cap. 20)
and the
Auctioneers
Act (Cap. 526).

33. The Court Brokers Act (Chapter 20) and the Auctioneers Act (Chapter 526) are hereby repealed with effect from the date on which this Act comes into force.

Amendment
of Cap. 23.

34. The Law of Contract Act is amended—

In section 3 (4) by deleting “public auction” and by inserting “public auction by a licensed Auctioneer”.

Amendment
of Cap. 28.

35. The Chattels Transfer Act is amended—

In regulation 7 of the Third Schedule by deleting “public auction” and inserting “public auction by a licensed auctioneer”.

Amendment
of Cap. 293.

36. The Distress for Rent Act is amended—

(i) by deleting “bailiff” wherever it appears and by inserting “licensed Auctioneer”;

(ii) in Section 2 by deleting the definition of “approved valuer” and by inserting—

“approved valuer” means a licensed valuer under the Valuers Act (Chapter 532) or a licensed Auctioneer under this Act other than the Auctioneer carrying out the distress or anyone who employs him or is employed by him.

“auctioneer” means a licensed auctioneer having the class of license authorizing him to levy distress for rent.

(iii) in Section 3 (1) by deleting “Subject to the provisions of this Act” and by inserting “Subject to the provisions of this Act and any other written law”;

(iv) in Section 4 (1) by deleting “ten days” and by inserting “fourteen days”;

(v) in Section 4 (2) by deleting “the ten days” and by inserting “seven days after the distraint”;

By deleting “public auction and by inserting “public auction by an auctioneer”;

- (vi) in Section 4 (3) by deleting "the ten days notice" and by inserting "seven days after the distraint";
 - (vii) in Section 4 (4) by deleting "ten days" and by inserting "fourteen days";
 - (viii) in Section 6 (1) by deleting "contract may seize" and by inserting "contract may instruct an auctioneer to seize";
 - in Section 6 (1) by deleting "ten days" and by inserting "fourteen days";
 - (ix) in Section 9 by deleting "goods or chattels take and seize" and by inserting "goods or chattels, instruct an auctioneer to take and seize";
 - in Section 9 proviso by deleting "landlord or lessor or other person entitled to arrears of rent" and by inserting "an auctioneer";
 - (x) in Section 11 by deleting "the landlord or lessor or his auctioneer (first calling to his assistance a police officer not below the rank of Assistant Inspector, who shall aid and assist therein, and, in case of a dwelling-house, oath being first also made before a magistrate empowered to hold a subordinate court or before a justice of the peace of a reasonable ground to suspect that the goods or chattels are therein)" and by inserting "the landlord or lessor through his auctioneer";
 - (xi) in Section 12 (1) by deleting "A lessor or landlord or his auctioneer" and by inserting "A lessor or landlord through an auctioneer";
 - in Section 12 (1) by deleting "the lessor or landlord hires or otherwise" and by inserting "the lessor or landlord or an auctioneer hires or otherwise";
 - in Section 12 (1) by deleting "provided by section 4" and by inserting "provided by law";
 - (xii) in Section 15 by deleting "and no more";
 - (xiii) in Section 18 by deleting the whole section;
 - (xiv) in Section 25 (1) by deleting "by the landlord";
- 37. The Registered Land Act is amended—**
- in Section 77 (1) by deleting "public auction" where it

Amendment
of Cap. 300.

occurs and by inserting "public auction by a licensed auctioneer".

Amendment
of Cap. 323.

38. The Agricultural Finance Corporation is amended—

in Section 33 (1) by deleting "public auction" and by inserting "public auction by a licensed auctioneer";

in Section 33 (2) by deleting "public auction" and by inserting "public auction by a licensed auctioneer";

in Section 33 (4) by deleting "twenty-one" days and by inserting "thirty days".

Amendment
of Cap. 529.

39. The Pawnbrokers Act is amended—

in Section 15 (1) by deleting "public auction" and by inserting "public auction by a licensed auctioneer";

in Section 15 (2) by deleting "public auction" and by inserting "public auction by a licensed auctioneer".

Amendment
of Cap. 533.

40. The Estate Agents Act is amended—

in Section 2 (3) by adding a new sub-clause (f):

"(f) by a licensed Auctioneer selling immovable property or any interest therein by auction".

Power to
make rules.

41. The Chief Justice may make Rules for the better implementation of the purposes of this Act and in particular providing for—

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

(b) the duties of Auctioneers when repossessing, attaching, storing and selling property under any law or contract;

(c) subject to any other written law, the duties of Auctioneers when acting as officers of the Court;

(d) the keeping by Auctioneers of accounts;

(e) the manner of disciplining Auctioneers;

(f) the fees payable by Auctioneers and the remuneration of Auctioneers;

(g) the training of Auctioneers and the fees payable therefor.

SUBSIDIARY LEGISLATION

Rules under section 41

THE AUCTIONEERS RULES

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THE AUCTIONEERS RULES

PART I—PRELIMINARY

1. These Rules shall be cited as the Auctioneers Rules.

Citation.

2. In these Rules—

Interpretation.

Words defined in the Act shall have the same meaning in these Rules.

“The Act” means the Auctioneers Act;

“accountants certificate” means the certificate provided for by these Rules;

“appendix” means the Appendix to these Rules;

“client” means any person on whose account an Auctioneer holds or receives client’s money.

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

“client’s 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 an Auctioneer or, in connection with his practice as an Auctioneer as 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; nor
 - (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, trustee of a will or settlement, trustee in bankruptcy, receiver or liquidator.

PART II—LICENSING AND IDENTITY

Application
for a
licence.

3. (1) An application for an "A" Licence made under sections 8 and 9 of the Act shall be in Licensing Form Number I in the Appendix and shall be accompanied by the following—

- (a) an application fee of KSh. 1,000 or such higher fee as the Chief Justice may prescribe.
- (b) (i) a certificate of good conduct from the Criminal Investigation Department
- (ii) a recommendation on Licensing Form Number 2 in the Appendix from the area Magistrate and the Auctioneer(s) under whom the Applicant has had experience for the two (2) years prior to the application.
- (iii) a recommendation on Licensing Form Number 3 in the Appendix from either a Religious Leader or the Location Chief of the Area of the Applicant's residence or an Advocate of at least ten (10) years standing.
- (c) evidence that the Applicant has four (4) "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 KSh. 100,000 or a guarantee of KSh. 100,000 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 (3) 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 KSh. 500,000 or such higher amounts as the Chief Justice shall 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 (3) years experience with a reputable firm of Auctioneers.

(2) An application for a "B" Licence made under section 8 of the Act shall in addition to the requirements stated in rule 3 (I), (b) to (e) be accompanied by—

- (a) an application fee of KSh. 1,000 or such higher fee as the Chief Justice may prescribe;
- (b) evidence of the Applicant having held an "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 KSh. 1,000,000 and for goods in trust for a minimum sum of KSh. 500,000 or such higher amounts as the Chief Justice shall prescribe.

4. At the time of issuing a licence the Board shall also issue an identity card to the licensee under section 10 (5) of the Act such identity card to be in such form with such safeguards as to validity and against counterfeiting as the Board may from time to time think fit.

Issuance
of Identity
Card to
Auctioneers.

PART III—ATTACHMENTS AND SALES

5. 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; this part shall apply unless so provided by any other written law or unless the Court otherwise directs under the Civil Procedure Rules: a letter of instruction shall be in the form prescribed in Sale Form I in the Appendix or as near thereto as circumstances permit.

Application
of Part III.

[Throughout this part of these Rules we have some difficulty where they impinge upon the Civil Procedure Rules. It needs to be borne in mind that much of the drafting

in those rules is over a century old and has been tinkered with from time to time to meet specific problems. It is surprising that it works as well as it does but not surprising that old-fashioned words like "Proclamation" are still used although they mean little to the ordinary Kenyan. Our terms of reference do not extend to amendments to the Civil Procedure Rules but we have taken the liberty of suggesting some simplifications so that sales by Auctioneers of movable and immovable property by court order or out of court all follow essentially the same procedure. The exact details of how to achieve this object will need to be approved by the Rules Committee.]

Register
of warrants
and letters
of
instructions.

6. An Auctioneer shall keep a register of all warrants and letters of instruction passed to him and shall record therein—

- (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 his 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 itemized inventory of the property to be sold showing the value to be placed on each lot;
- (g) the amount realized 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.

Payment of
Auctioneers
charges.

7. The debtor shall pay the charges of the Auctioneer, but if the debtor cannot be traced or has no goods upon which execution can be levied or the sale proceeds are insufficient to cover the same, then the creditor shall pay those charges or the deficiency thereof.

8. (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.

Insurance.

(2) In case of a stay of the seizure or repossession of any property or objection proceedings thereto the Auctioneer 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 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 the fees and costs therefor and the payment thereof 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 instructions 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 and the cost thereof and may request the court to fix the fees and costs therefor and the payment thereof in advance or as the court may think just such fees and costs being in addition to those provided for in these Rules.

9. Where an Auctioneer has reasonable cause to believe that—

Police assistance.

(1) he may have to break any door of any premises where goods may be seized or repossessed; or

(2) he may be subject to resistance or intimidation by the debtor or others;

(3) a breach of the peace is likely consequent upon the seizure, repossession or attempted seizure or repossession of any property;

the Auctioneer shall request assistance of the nearest police station which shall with due expedition provide a police escort to the Auctioneer to enable him to carry out his duties peacefully upon payment by the Auctioneer of any necessary charges.

Independent valuation of goods attached.

Contents of court warrant or letter of instruction.

10. 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. A court warrant or letter of instruction must include:

- (1) Moveables—including perishables and livestock—
 - (a) 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;
 - (b) person against whom the decree is to be executed;
 - (c) exact location of goods;
 - (d) person to point out the goods;
 - (e) where ascertainable a list of the goods to be attached or repossessed;
 - (f) where appropriate reserve prices or where there are to be no reserves, a record of the reasons for not selling subject to reserves;

[Note that the present form of court warrant if Form Number 25 Appendix D to the Civil Procedure Rules but we think that after discussion with the Rules Committee a single form along the lines of the letter of instruction Sale Form 1 at the end of these Rules could be prepared to cover both court sales and sales out of court.]

(2) Immovable property:

- (a) As in (a) to (e) in Sub-rule 1 hereof and in addition thereto.
- (b) Land reference number, file number, plot number, flat number-as the case may be.
- (c) Area in hectares or in square metres.
- (d) User and any restriction by statute or otherwise on the disposition of the property or any interest therein.
- (e) Tenure and in the case of leasehold particulars of the landlord and the annual land rent.

- (f) Location and in the case of land situated within a township or municipality, the amount of the most recently available annual site value tax.
- (g) Accurate description of improvements and developments.
- (h) Names and addresses of encumbrancers on the title together with—
 - (i) the estimated amount due to any encumbrancer;
 - (ii) the estimated amount of arrears of land rent rates and taxes.
- (i) The names addresses and titles of any persons in possession of the property to be sold or any part thereof.
- (j) Reserve price for each separate piece of land based on a professional valuation carried out not more than twelve (12) months prior to the proposed sale.

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

Movables
other than
perishable
good and
livestock.

- (a) Record the court warrant or letter of instruction in the Register;
- (b) prepare a proclamation where applicable in the prescribed form 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 or 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 a grace period of seven (7) days 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 grace period 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 auction thereof;

(f) arrange advertisement within seven (7) days from the date of removal of the goods and arrange sale not earlier than seven (7) days after the first newspaper advertisement and not later than fourteen (14) days thereafter;

(g) not remove any goods under the proclamation until the expiry of the grace period.

Perishables
and livestock.

13. 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 where applicable in the prescribed form 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 where any person refuses to sign such inventory the Auctioneer shall sign a certificate to that effect;

(c) give in writing to the owner of the goods a grace period of forty-eight (48) hours 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 grace period without payment remove the goods;

(e) ensure safe storage of the goods pending auction thereof;

(f) arrange immediate advertisement and sale.

Non-removal
or alteration
of attached
goods.

14. No person shall remove, alter, damage, substitute or alienate any goods comprised in the proclamation until they are redeemed by payment in full of the amount in the court warrant or letter of instruction or such lesser amount as the creditor or his advocate shall agree in writing.

Immovable
property.

15. 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 indicating the value of each property to be sold;
- (c) locate the property and serve the Notification of Sale on the property and on the registered owner thereof or an adult member of his family residing or working with him or where any 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 grace period of not less than forty five (45) 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 grace period without payment arrange sale of the property not earlier than fourteen (14) days after the first newspaper advertisement.

16. (1) An advertisement by an Auctioneer shall in addition to any other matter required by law or by the Court contain—

Advertisement.

- (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 whether or not they are to be sold with or without reserve;
 - (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 whether or not they are to be sold with or without reserve;
 - (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.

Auction.

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

(i) 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

(ii) in other sales between the hours of 10.00 a.m. and 10.00 p.m.

and in either event—

(iii) 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 thereon.

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

Proceeds
of sales.

18. (1) Payments by purchasers at a forced sale shall be in the form of cash or bankers cheque.

(2) Payments by purchasers in all other cases shall be in such form as the Auctioneer shall think fit.

(3) On receipt of the proceeds of sale the Auctioneer shall issue a receipt therefor 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 itemized account in the case of movable property within fifteen (15) days of the sale and in the case of immovable property as provided in Order 21 Rule 74 Civil Procedure Rules.

PART IV—ACCOUNTS

19. (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.

Maintenance
of client
account.

(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 Rule 20 (1) (e) is entitled to split but does not split.

(3) An Auctioneer need not pay into a clients account client's money held or received by him which—

(a) is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to a court; or

(b) is received by him in the form of a cheque or draft and is, without delay, 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 only pay into a client's account money which he is by these Rules permitted or required to pay in.

20. (1) Where an Auctioneer holds or receives a cheque or draft which includes clients money:

Client
account.

(a) he may where practicable split the cheque or draft and, if he does so, he shall deal with each part thereof 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 client's account.

Splitting
cheques and
drafts.

(2) Money which is not client's money but which is paid into a client's account, other than under Rule 19 (2) (a) shall be paid out as soon as reasonably possible.

21. (1) Subject to Rule 22 an Auctioneer may withdraw from a client's account:

- (a) money properly required for payment to a client or a court;
- (b) money properly required for a payment authorized by a court or client;
- (c) money properly required for or towards payment of the Auctioneers charges 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 client's money paid into the account under Rule 19 (2) (c).

(2) A cheque drawn upon a client's account shall bear on its face the words "client's account".

(3) An Auctioneer shall not withdraw from a client's 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.

(4) No money shall be withdrawn from a client's account under any of sub-paragraphs (c), (d), (e) and (f) of paragraph (1) except by a cheque drawn in favour of the Auctioneer.

(5) No money shall be withdrawn from a client's account other than in accordance with this rule.

Books of
account.

22. (1) An Auctioneer shall keep properly maintained books of account showing—

- (a) every receipt by him of client's money, in respect of each client;
- (b) every payment or application by him of or from client's money, in respect of each client;
- (c) the amount held by him for the time being in a client's account, in respect of each client; and

(d) the moneys expended by him for and the costs charged by him to each client.

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

(a) a manual cash book for office and client's account.

(b) a cash book and a ledger each of which shall record:

(i) every transaction involving client's money, or other money dealt with by the Auctioneer through a client's 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 clause 2 (a) hereof a cash book or ledger kept under this rule may be a loose leaf book or may consist of cards or other permanent records necessary for the operation of a mechanical or electronic system of book-keeping.

(4) The details required under paragraph (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 of which is ruled with two principal money columns on each side.

23. An Auctioneer shall preserve for at least six (6) years from the date of the last entry therein all books of account and accounting records in mechanical or electronic form required to be kept by him under Rule 22.

Preservation
of records.

24. 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 thereof to the Board, together with a written report on the circumstances.

Reporting of
record lost
or destroyed.

25. 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.

Accountant's
Certificate.

Who may not
give an
Accountant's
Certificate.

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

- (a) he has at any time during the account period or subsequently 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 paragraph (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 of professional misconduct;
 - (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.

Procedure on
examination
of accounts.

27. Before signing a certificate an accountant shall—

- (a) make a general test examination of the books of account and other mechanical or electronic accounting records of the Auctioneer;
- (b) ascertain whether a client's account is kept;
- (c) make a general test examination of the bank pass 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 account; and
 - (ii) the balance standing to the credit of the client account.

Dispensation
of
requirements
of Rule 25.

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

Commencement
of an
Accounting
period.

29. Subject to Rule 30 the accounting period specified in an accountant's certificate shall:

- (a) begin at the expiry of the last preceding accounting

period for which an account's certificate has been delivered;

- (b) cover not less than twelve (12) months;
- (c) terminate not more than three (3) 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. (2) 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.

Accounting period.

(2) An accounting period shall, where an Auctioneer retires from his business and is obliged to deliver a final accountant's certificate, end on the date when he last held client's money and may last less than twelve (12) months.

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

Separate accounting period.

PART V—DISCIPLINE

32. A complaint to the Board under Section 19 of the Act shall be made by way of the affidavit in Disciplinary Form Number 1 in the Appendix:

Form of complaint.

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

Fee for complaint.

34. If a complaint made to the Board is dismissed under the proviso to Section 19 (3) of the Act, the Board shall, if so required by the complainant or the Auctioneer to whom the complaint relates, make a formal order dismissing the complaint.

Formal order by Board on dismissing a complaint.

Fixing date
for hearing
of a
complaint.

35. In case of a complaint against an Auctioneer the Board shall fix a day for the hearing, and the Executive Secretary shall give notice thereof to each party to the proceedings not less than twenty-one (21) 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.

Notice of
hearing.

36. The notice of hearing—:

- (a) shall be in Disciplinary Form Number 2 in the Appendix 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 (14) days before the day fixed for the hearing, a list of all documents on 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 of these Rules, any other charge or ground which may become apparent at the hearing and which fairly arises from the matters set out in the complaint.

Admission
of documents.

37. (1) Any party may by notice in writing, at any time not later than nine (9) days before the day fixed for the hearing, 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 (6) 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 such other party refuses or neglects to give notice of non-admission within the time prescribed in paragraph (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 paragraph (1), and the document is proved at the hearing, the costs of proving the document 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 Rule 37 (1) the Board may disallow the costs of proving the document.

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

Inspection of documents.

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

Hearing of complaints to be in public.

40. If any party fails to appear at the 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.

Failure to appear at hearing.

41. 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.

Evidence by Affidavit.

42. 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.

Withdrawal of complaint.

43. The Board may of 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.

Adjournment of hearing.

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

Consolidation of proceedings.

45. 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.

Amendment of complaints.

46. Upon the hearing or determination of any complaint the Board may, in the case of a complaint against an Auctioneer, without finding any professional misconduct

Power to award costs.

proved against the Auctioneer nevertheless order any party to pay the costs of proceedings if, having regard to his conduct and to all the circumstances of the case, the Board so thinks fit.

Record of proceedings before the Board.

47. The Chairman of the Board shall take or cause to be taken a note of all proceedings before the Board, or may order that the record of any proceedings before it shall be taken by shorthand note or any electronic or mechanical means.

Inspection of record of proceedings.

48. Any party to proceedings before the Board shall be entitled to inspect the record or transcript thereof, and any party entitled to be heard in any appeal filed from any 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 from time to time direct.

Service of notice or document.

49. Service of any 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.

Discretion of the Board to dispense.

50. 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.

Extension of time.

51. 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.

Witness Summons.

52. A witness summons issued under Section 19 (4) of the Act shall be in Discipline Form 3 in the Appendix.

PART VI—OFFENCES

Non-compliance of these Rules by an Auctioneer.
Penalty

53. An Auctioneer who fails to comply with any one of these Rules without lawful excuse shall be guilty of an offence.

54. A person who commits an offence under these Rules for which no other penalty is prescribed shall be liable to a fine not exceeding Kenya Shillings Fifty Thousand (KSh. 50,000) or to imprisonment not exceeding one (1) year or to both such fine and imprisonment.

PART VII—FEES

55. The following fees shall be payable to the Board:

Payment
of fees.

(1) (a) Upon application for the grant of an "A" licence: KSh. 1,000.

(b) Upon application for the grant of a "B" licence: KSh. 1,000.

(2) (a) Upon application for the renewal of an "A" licence: KSh. 500.

(b) Upon application for the renewal of a "B" licence: KSh. 500.

(3) (a) Upon the issue of an "A" licence: KSh. 5,000.

(b) Upon the issue of a "B" licence: KSh. 7,500.

(4) (a) Upon application for a special licence KSh. 1,000.

(b) Upon the issue of a special licence KSh. 2,000.

(5) (a) Upon application for the amendment of any licence: KSh. 1,000.

(b) Upon application for the issue of a duplicate of any licence: KSh. 1,000.

(c) Upon the issue, renewal, amendment or replacement of an identity card: KSh. 1,000.

(6) To inspect the register of licences: KSh. 100.

(7) Upon the filing of a complaint with the Board: KSh. 500.

PART VIII—REMUNERATION

56. Except as may be provided by any other written law or by contract:-

Fees and
disbursements
payable to
an Auctioneer.

(1) The following fees payable to the Auctioneer for the attachment, repossession and sale of movable and immovable property under court warrants or letters of instructions shall be chargeable 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 therewith within the monetary jurisdiction of the High Court;

a registrar as defined in the Civil Procedure Rules may on the application of any party to the dispute assess the fees 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 sub-rules (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 seven (7) days of the decision of the registrar or magistrate.

(6) The fees of a licensed Auctioneer upon attachment seizure, repossession and sale shall be as follows:

(a) Upon receipt of a warrant or letter of instruction in respect of movable or immovable property KSh. 500

(b) Where there is no property found to attach, or where property to the value of KSh. 2,000 or less is found KSh. 2,000

(c) Upon attachment or repossession of movable property the following charges may be levied based upon the value placed on the items attached or repossessed as per itemized inventory (or upon the decretal amount) whichever is less:

	<i>Per cent</i>
KSh. 2,001 to 50,000	5
KSh. 50,001 to 100,000	3
Over 100,000	1.5

(d) In the event of the amount for which property is to be attached or repossessed being tendered to the Auctioneer before any movable property is

attached or repossessed he shall be entitled to a fee of KSh. 2,000 and his out-of-pocket expenses, if any.

- (e) In the event of an attachment or repossession by an Auctioneer of movable property being stayed or otherwise postponed or raised or money tendered any time after attachment or repossession but before sale, he shall be entitled to the attaching or repossessing charges in addition to his reasonable out-of-pocket expenses.
- (f) Upon sale of movable property the following charges may be levied, based upon the amount realized at the sale—

	<i>Per cent</i>
KSh. 0 to 2,000	10
KSh. 2,001 to 10,000	7.5
Over KSh. 10,000	5

[This scale is essentially that provided at present in the Auctioneers Act with the brackets slightly widened.]

- (g) For storing movable property the Auctioneer may claim one-quarter per centum per day of the value placed by him upon the property commencing on the day of removal with a maximum of K.KSh. 500 per day; but in special cases the Court may increase or decrease the charges.
- (h) Upon taking possession of Immovable property KSh. 2,000
- (i) Upon sale of immovable property, the following charges may be levied, based upon the amount realized at the sale:

	<i>Per cent</i>
KSh. 0 to 30,000	5
KSh. 30,001 to 600,000	2.5
KSh. Over 600,000	1.25

- (j) Notwithstanding anything herein contained upon the attachment and sale of livestock ten (10%) per cent based upon the amount realised at the sale.
- (k) If after the sale has been advertised immovable property is withdrawn from the sale or the sale is

stayed or otherwise postponed then the licensed Auctioneer shall be entitled to one-half of the fee to which he would have been entitled had the property been sold for an amount equal to the decretal amount or to the reserve price thereof whichever is the less plus all reasonable disbursements.

(l) For taking an inventory of, or transporting movable property and for advertising and insuring movable or immovable property, the licensed Auctioneer shall be awarded such sum as the Court may consider reasonable.

(m) For evicting a person in possession of premises by executing a court order or otherwise:

(i) of residential or commercial premises:

(a) On premises of 15 square metres or less of internal area KSh. 5,000.

(b) On premises of more than 15 square metres of internal area KSh. 10,000.

(ii) of agricultural premises

(a) On premises of 5,000 square metres in area or less KSh. 5,000.

(b) On premises of more than 5,000 square metres KSh. 10,000.

(n) Travelling expenses by car may be allowed upon at three times the scale for the time being prescribed for Government officers.

(o) (i) The Court upon giving the parties the opportunity to be heard may increase the fees allowed to a licensed Auctioneer under this Schedule.

(ii) In exercising its discretion under this paragraph the Court shall have regard to all relevant circumstances of the case, including—

(a) the complexity and difficulty or otherwise of the work required to be done; and

(b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the licensed Auctioneer.

REPUBLIC OF KENYA

THE AUCTIONEER'S ACT—CAP.

APPLICATION FOR GRANT OF LICENCE

Note:—To be submitted in duplicate to the
Chairman, the Auctioneer's Licens-
ing 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 of the Applicant:
3. Date of Birth or Approximate Age:
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 resident:
- Name of the Area Chief:
8. Name of the Bank:
- Branch: Account Number

PART TWO

9. Have you been convicted of any criminal offences? If so, State
the charge:

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 been declared Bankrupt?

PART THREE

14. (i) Secondary School attended:

(ii) Qualification attained in 14 (i)

(iii) Any further training:

(iv) Qualification attained in 14 (ii)

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 certificate of good conduct from the Criminal Investigation Department;

(ii) a recommendation on Form Number 2 of Appendix from the Area Magistrate and the Auctioneer whom the Applicant has had experience for the two (2) years preceding the application;

(iii) a recommendation on Form Number 3 of Appendix from either a Religious Leader or a location Chief of the Area of the Applicant's residence or 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 KSh. 500,000
- (f) A cash deposit of KSh. 100,000 or a Guarantee of KShs. 100,000 from a Bank or Insurance Company properly executed and approved by the Board for the due performance by the Auctioneer of this 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 Auctioneer's Act which reads; "A person who knowingly makes a false statement in connection with an application for the grant, renewal or amendment of licence shall be guilty of an offence."

20. Pursuant to Rule 3 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 NUMBER 2

REPUBLIC OF KENYA

THE AUCTIONEER'S ACT—CAP.

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 or 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)

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 worked:
- 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

REPUBLIC OF KENYA

THE AUCTIONEER'S ACT—CAP.

FORM OF RECOMMENDATION FOR AN AUCTIONEER'S LICENCE

(To be filled by 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:
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.

Signature:

Stamp:

Date:

COMPLAINT AGAINST AN AUCTIONEER

(Before the Auctioneer's Licensing Board Established under the Auctioneers Act)

MISCELLANEOUS CAUSE NUMBER OF 19.....

In the Matter of An Auctioneer
and

In the Matter of the Auctioneers Act, Cap.

To the Secretary of the Auctioneer's Licensing Board.

I.(i) * of

..... make oath and say as follows:

1. I make a complaint, on the grounds set out below, against the conduct of (ii)† of an Auctioneer
2. (Here state the fact of the matter and 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
....., 19..

Before me,

.....
Commissioner of Oaths or Magistrate

NOTE.

*Insert full name: address and description of complainant.

†Insert full name and last known postal address of Auctioneer.

NOTICE OF HEARING

(Before the Auctioneer's Licensing Board established under the Auctioneers Act)

DISCIPLINARY CAUSE NUMBER OF 19.....

In the Matter of (i) *

and

In the Matter of the Auctioneers Act, Cap.

To:

of

NOTICE is hereby given THAT—

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

of

to the Auctioneers Licensing Board.

2. The hearing of the said complaint will take place on the

..... day of 19.....

at to'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 to 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 and to which your attention is directed. 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....., 19.....

In the name of the Auctioneers Licensing Board

Copy to: Executive Secretary

.....
Complainant
Applicant

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

In the name of the Auctioneer's Licensing Board

.....
Executive Secretary

NOTE:

*Insert the full names of the Auctioneer.

WITNESS SUMMONS

(Before the Auctioneer's Licensing Board established under the Auctioneers Act, (Cap.)

DISCIPLINARY CAUSE NUMBER OF 19.....

In the Matter of an Auctioneer
and

In the Matter of the Auctioneers Act, Cap.

You are required to attend before the Auctioneers Licensing Board at on day of 19, 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)

AND herein fail not.

Given under my hand at Nairobi this day of, 19

In the name of the Auctioneers Licensing Board

.....
Executive Secretary

To

.....
.....
.....

THE AUCTIONEERS ACT, CAP.
(Rule 5)

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
authorized:

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 costs: KSh.

(b) Estimated Auctioneer's fees: KSh.

8. Reserve prices or reason for selling without reserve:

.....
.....

9. Advertising instructions/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 in paragraph 4 by public auction at the best price obtainable subject to reserves in paragraph 8.*
- (iii) Hereby agree to indemnify you and keep you indemnified against all costs, damages, losses and expenses you may incur in the lawful exercise of your duties as an 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.

*Delete as appropriate.

PROCLAMATION OF ATTACHMENT/REPOSSESSION/DISTRAINT OF MOVABLE PROPERTY

1. Auctioneer's Name: Tel:
 P. O. Box Trading As:
 Building Floor Street
2. Creditors Name and Address:
3. Debtors 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/distrain* as specified overleaf shall be in the meantime have been paid.

SCHEDULE OF MOVABLE PROPERTY

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

*Delete as appropriate.

SCHEDULE OF MOVABLE PROPERTY—(Contd.)

Signature: Judgment Debtor/Agent:
Auctioneer:
Witness If Any:
Dated:

AUCTIONEERS CHARGES

Receipt of court warrant or letter of instruction		<i>KSh.</i>
If property less than KSh. 2,000 found		500
Fees on attachment/repossession/distrain.*		2,000
		<i>Per cent</i>
KSh. 2,000 to KSh. 50,000		5%
KSh. 50,000 to KSh. 100,000		3%
Over KSh. 100,000		1%
TOTAL AUCTIONEERS CHARGES		_____
<i>Add estimated charges for:</i>		
Transport .. ..		.....
Storage .. ..		.....
Advertising .. ..		.....
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.

*Delete as appropriate.

NOTIFICATION OF SALE OF MOVABLE PROPERTY

1. Auctioneer's Name:

Trading as

P.O. Box Tel:

Building Floor Street

2. Creditors Name and Address:

3. Debtors 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 creditor 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>
--------------------	---	------------------	--------------

* Delete as appropriate.

SCHEDULE OF MOVABLE PROPERTY—(Contd.)

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.

AUCTIONEER'S CHARGES

	<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/distraint:*	
	<i>Per cent</i>
KSh. 2,000 to KSh. 50,000	5%
KSh. 50,000 to KSh. 100,000	3%
Over KSh. 100,000	1%
TOTAL AUCTIONEERS CHARGES	_____

Add estimated charges for:

Transport .. .. .	.....
Storage .. .. .	.....
Advertising .. .. .	.....
Insurance .. .. .	.....
Other disbursements .. .. .	.....

Fees on Sale:

	<i>Per cent</i>
First KSh. 2,000	10%
KSh. 2,001 to KSh. 10,000	7.5%
Over KSh. 10,000	5%

Date Signature of Auctioneer:

Date: Signature of Debtor:

This form must be signed on both sides by the Auctioneer and the Debtor.

*Delete as appropriate:

ACKNOWLEDGEMENT

The task was onerous. The problems and challenges encountered numerous, varied and complicated. The finances were limited and oft-times were not forthcoming on time. The time which was allowed to complete the assignment was also limited. All that notwithstanding the task is now completed.

I would wish as Chairman of the Task Force to express my sincere thanks and appreciation to all those who contributed in one way or another to this report.

In particular, I would like to thank the Honourable the Attorney-General for giving us the opportunity to make our small contribution in law reform; the Honourable the Chief Justice for giving me and the several members of staff of the Judiciary who were involved in this exercise, permission from time to time to participate in the inquiry; the Office of the President, the Provincial Commissioners and the various officers in the Provincial Administration for their assistance in making our provincial visits possible; and the many people who presented their views to the Task Force. I would also like to thank the Registrar of the High Court of Kenya, Mr. Jacob ole Kipury, for allowing us the use of several facilities of the Judiciary without which our task would have been greatly hampered.

I would like to thank Mrs. Florence A. Jaoko, for her research assistance and her good sense of humour; I would also like to extend special thanks to Sir Peter Hewett for his invaluable and in-depth research and draftsmanship and to Mr. M. Z. A. Malik for his resourcefulness and assistance to Sir Peter Hewett in compiling this report. Despite their busy schedules they were able to avail this report and the draft Bill promptly.

I would also like to thank all the members of the Task Force who, in spite of their busy schedules, undertook and carried out the inquiry with religious devotion and often sacrificed their time and resources to ensure the success of this report.

Last but not least I extend my thanks to the support staff for facilitating the various meetings we held in the various parts of the country.

THE HONOURABLE
MR. JUSTICE S. E. O. BOSIRE, M.B.S.,
*Chairman,
Task Force to Review Laws
Relating to Auctioneers and Brokers.*

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