**Harnam and others v Kirpal and another**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 6 March 1974

**Case Number:** 1/1974 (27/74)

**Before:** Sir William Duffus P, Law Ag V-P and Mustafa JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Kenya – Chanan Singh, J

*[1] Civil Practice and Procedure – Execution – Sale – Whether incorrect advertisement of auction*

*nullifies sale.*

*[2] Rating – Decree for rates – May either be executed or leave of High Court may be obtained – Rating*

*Act* (*Cap.* 267), *s.* 19 (*K.*).

**Editor’s Summary**

The City Council of Nairobi obtained judgment against the registered proprietor of land for the rates due upon it and then applied under the Civil Procedure Act for sale of the land in execution. The respondents bought the land at auction and applied to have the caveats registered by the applicants removed. The High Court removed the caveats, holding that any rights they might have protected were barred by limitation. The applicants applied for leave to appeal, contending that the auction advertisement contained unauthorised misstatements resulting in a low price being realised, that the procedure by way of sale in execution was a nullity, the only proper manner of sale being a mortgagee’s suit for sale of the land under the Transfer of Property Act, and that therefore the respondents were not persons claiming land.

**Held –**

(i) if there was anything incorrect in the advertisement it was a mere irregularity;

( ii) a rating authority has an option either to execute against the land or to apply to the High Court for

an order for its sale;

(iii) the respondents were therefore properly claiming land.

Application dismissed.

**No cases referred to in judgment**