

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 283 OF 2018

HATARI SECURITY COMPANY LTD.....APPLICANT

VERSUS

1. HAMISI CHARO

2. NDUTUMI AUCTIONEERS.....RESPONDENTS

R U L I N G

1. It is not in dispute that the motor vehicle Registration No. KCM 764X was attached and kept by the auctioneer pursuant to warrants which have since been set aside. When set aside, at the instance of the judgment debtor, all burdens they carried and placed on the judgment debtor were equally set aside. Accordingly, I do find that the judgment debtor cannot be burdened with the storage charges as contended by the auctioneers counsel.

2. In the same vein, I do find that the auctioneer has given a plausible and sufficient explanation to the effect that he has obeyed and complied with the court orders for release, has issued a release order but the motor vehicle having been kept at a parking yard, the yard owner insists on the storage charges. I consider that yard owner as an independent contractor and who is not yet before me and I cannot determine his rights while he is not before me.

3. Accordingly, and this matter having come before me by way of supervisory jurisdiction, and to bring it to an early close, I do order that the motor vehicle be released to the Applicant forthwith and any costs of storage be pursued from the decree-holder and paid by him upon agreement on the sum due or on taxation by the trial court.

4. I discharge the auctioneer of the accusation of contempt and direct that the application dated 7/3/2019 be dismissed with no orders as to costs.

5. This file shall now be marked as closed, and the lower court file earlier on brought here for perusal, be remitted back to the trial court to enable concluding court processes be undertaken.

Dated and delivered at Mombasa this 26th day of March 2019.

P.J.O. OTIENO

JUDGE