



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**MISC. CIVIL APPLICATION 5 OF 2004**

**OTIENO YOGO & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**CHRISANTUS OKETCH.....RESPONDENT**

**R U L I N G**

- 1). The notice of motion by the applicant/auctioneer dated 13-8-2014 prays that this court reviews and or set aside its orders dated 23-7-2014 based on the fact that a proclamation was done. It is supported by the affidavit of Felix A. Owuor dated 13-8-2014. Basically the applicant's contention is that had the court known that a proclamation was done on 27-1-2011 of the suit tractor then it would not have arrived at the said decision.
- 2). The objector vide the replying affidavit of Stephen Kopot Advocate has filed a reply which essentially shows that the auctioneer was cognizance of the issues herein as at 17-2-2011. The respondent simply filed grounds of opposition dated 12-9-2014 which attacked the application as being frivolous and vexatious and an abuse of court process.
- 3). The essence of allowing such an application for review is well settled namely that there are new material information which was not within the applicant's knowledge at the time of passing the decree and or there is a mistake apparent on the face of record.
- 4). It has been alleged that the auctioneer was never served with the proceedings herein. However the notice of objection served upon him on 17-2-2011 has not been controverted. In any case if indeed he disputed the objection proceedings then why wait till 17-11-2011 about 9 months to dispose the tractor. I do not think that all along he was not aware of the proceedings.
- 5). In any case and of more significance is the proclamation itself dated 28-1-2011. From my reading of the same. I do not find anywhere where the motor tractor was proclaimed. All that were proclaimed were:
  1. Assorted pharmacy drugs.
  2. 1 (one) fridge.
  3. All movable household property.
  4. Any other movable property that belongs to judgment debtor.
- 6). Rule 12 (1) (b) of the Auctioneers Act Chapter 526 states as follows:

**“12 (1) Upon receipt of a court warrant or a letter of instruction the auctioneer shall in the case of movable other than goods of a perishable nature and livestock;**

a. ....

b. **prepare a proclamation in sale form 2 of the schedule including the value of specific items and the consolidation of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;”**

7). As indicated above I do not find any evidence of the proclamation of the tractor. Further nowhere did the objector or his witness sign the proclamation. In any case the auctioneer having failed to secure the signature of the objector did not prepare a certificate as provided in the afore quoted rule.

8). In the premises I do not think that even if the above information was brought to the attention of the court it would have changed much under Order 45 (1), (2), and (3) of the Civil Procedure Code for one to qualify pre supposes that no appeal has been filed. However there is already a notice of appeal dated 4-8-2014 which in my opinion militates against the application and goes contrary to the rules.

Consequently, and in light of the above observation I do not think that this application is meritorious. The same is dismissed with costs.

**Dated, signed and delivered at Kisumu this 18th day of February, 2015.**

**H.K. CHEMITEI**

**JUDGE**