



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL APPLICATION NO. 5 OF 2004**

**PATRICK J.O. OTIENO, GEOFFREY O. YOGO T/A OTIENO,**

**YOGO & CO. ADVOCATES.....APPLICANT/  
RESPONDENTS**

**VERSUS**

**CHRISANTUS**

**OKECH.....RESPONDENT**

**AND**

**IN THE MATTER OF AN APPLICATION BY: NELSON DEYA  
ODEP.....APPLICANT/OBJECTOR**

**MR. TOM VICTORIA BLUE**

**SERVICES.....AUCTIONEER**

**R U L I N G**

1). The objection application dated 9-2-2012 prays for the orders that:

1. **This court be pleased and order the release of attached property herein motor vehicle Reg. No. KJW 464 Ford Tractor to the objector.**
2. **This court do order the release of the attached property herein being KJW 464 tractor to the objection pending hearing and determination of the application dated 21-11-2011.**
3. **The applicant/respondents and or the Auctioneer do pay the objector such sum as the court will determine to reimburse his loss of income for the period the property was in their possession under attachment.**

2). The application is supported by the affidavit of Nelson Odep. He has attached a sale agreement between him and one Said M. Mwandani which was entered on 21-9-2006. He has further exhibited a copy of the log book which shows the registered owner as Mr. Mwandani.

3). The respondent did not file any replying affidavit but chose to rely on the grounds of opposition dated 29-3-2012 where they have alleged that the application is defective for violating the provision of the Traffic Act. They argue further in their written submissions that section 8 and 9 of the Traffic Act Cap 403 Laws of Kenya expects that the name appearing in the log book of the motor vessel is always the registered owner and therefore it was improper for the applicant to rely on the sale agreement.

4). I have perused the pleadings herein. I do agree with the respondent in their interpretation of section 8 and 9 of the Traffic Act. It is expected that once sold, the purchaser of the vehicle ought to have transferred the same to himself within 14 days thereafter and have himself registered as the owner. In this case the objector seemed to have waited for long to do so.

5). There is however another dimension raised by the objector in his supporting affidavit which was not controverted by the respondent, namely that there was no prior proclamation of the tractor. Although this issue seemed to have been raised in passing, a closer look at the pleading in the file does not show that the tractor was proclaimed. The available documents are the notification of sale dated 15-11-2011 and the newspaper advertisement dated 17-11-2011. None of the documents attached shows that there was any proclamation.

6). In the premises, and presuming that this is true then the entire execution process was defective. The court cannot close its eyes on this. Ordinarily there ought to be proclamation of the judgment debtor's goods where he is given 7 days to respond or else the same are advertised for sale. It appears that no proclamation was done but the tractor was attached and notification of sale was issued thereafter.

Although as found above the applicant has not complied with section 8 and 9 of the Traffic Act, the applicant is equally guilty of failing to comply with the due process of execution as outlined above. This court therefore has no option but to allow the application as follows:

1. **Motor tractor Reg. No. KJW 464 Ford, be released to the applicant/objector unconditionally.**
2. **Each party shall bear their costs.**

**Dated, signed and delivered at Kisumu this 23rd day of July, 2014.**

**H.K.  
JUDGE**

**CHEMITEI**