



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO.229 OF 2008**

**JACK OGUDA (Suing as the Managing Director of KENYA PREMIER LEAGUE LIMITED)...**  
**PLAINTIFF**

**VERSUS**

**SAMSON KEENGU NYAMWEYA**

**PETER OCHIEL**

**OMONDI ADUDA.....**  
**.....DEFENDANTS**

**RULING**

1. The plaintiff has filed a Notice of Motion dated 23<sup>rd</sup> May, 2014 seeking the following orders:  
“
  - i. *That this honourable court be pleased to set aside the warrants of attachment of moveable property issued herein.*
  - ii. *That this honourable court be pleased to discharge the liability of the plaintiff under the decree issued herein and mark the same as fully settled.*
  - iii. *That the plaintiff be awarded costs of this application and be discharged from any liability for the auctioneers costs.”*
2. The application is supported by the affidavit of Jack Oguda and Samson Keengu Nyamweya sworn on 23<sup>rd</sup> May, 2014. They deponed that on 11<sup>th</sup> December, 2013, the taxing master taxed party and party costs in the sum of KShs. 2,850,172.96/-. Parties negotiated and settled that the sum of KShs. 2,000,000/- only be paid as final settlement. Payment was thereafter effected by way of Real Time Gross Settlement (R.T.G.S.). Despite the payment, Hebros Auctioneers proclaimed Kenya Premier League Limited’s (*‘the league’*) moveable assets. It is there gravamen that the attachment of the said assets is imminent and shall occasion the league embarrassment, substantial and irreparable loss.
3. The application was opposed vide a replying affidavit of Neville Walusala Amolo sworn on 12<sup>th</sup> August, 2014 and a grounds of opposition dated 12<sup>th</sup> August, 2014. The deponent challenged the 1<sup>st</sup> defendant’s capacity to engage the league into the negotiations that culminated to payment of KShs. 2,000,000/-. It was argued that the firm of Amolo and Kibaya Advocates were not properly taken off the record and therefore they should be paid KShs. 2,850,172.96/- to enable them take proper steps to recover the sums paid to the 1<sup>st</sup> defendant.

4. Counsels for the plaintiff and 1<sup>st</sup> defendant reiterated the averments in the affidavits at the hearing of the application. I have considered the depositions and the submissions of the parties herein. The respondent to the application is aggrieved by the fact that he was side-lined in the taxation of costs yet he had not ceased acting for the 1<sup>st</sup> defendant. The dispute between the 1<sup>st</sup> defendant and the respondent is whether the respondent is entitled to costs. Even in instances where an advocate's instructions have been withdrawn, such advocates are entitled to costs. To my mind therefore the respondent herein was entitled to costs. However, attaching the plaintiff's assets was not the proper procedure to be followed rather he should tax his bill of costs against the client. In the circumstances, I allow the application herein with costs to the plaintiff. The respondent to properly tax his bill against the 1<sup>st</sup> defendant as provided in Rule 13 of the Advocates (Remuneration) Order if need be.

Dated, Signed and Delivered in open court this 18<sup>th</sup> day of December, 2014.

**J. K. SERGON**

**JUDGE**

In the presence of:

.....**for**  
**r the Plaintiff**

.....**for**  
**the Respondent**