



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 655 OF 1988**

**WELIMAINSURANCE BROKERS..... DECREE HOLDER/APPLICANT**

**VERSUS**

**MUHORONI SUGAR CO. LTD.....JUDGMENT DEBTOR/1<sup>ST</sup> RESPONDENT**

**KENYA SUGAR BOARD SUING THROUGH JOINT RECEIVERS AND MANAGERS OF  
MUHORONI SUGAR CO. LTD (IN RECEIVERSHIP).....OBJECTORS/2<sup>ND</sup> RESPONDENT**

**RULING**

The application dated 29/11/2011 seeks prayers (2) that the court to issue an order to plaintiff and direct O. Services Auctioneers to forthwith release motor vehicle numbered KAV 448 V to the applicant/defendant and (3) that the court do enter judgment for defendant/applicant against the plaintiff for Shs.619, 476.53 and (4) in default of payment the said sum execution proceedings do issue and finally (5) costs arising from this application and such execution to be paid by the plaintiff.

On the grounds that when the said vehicle was attached by the plaintiff and the said auctioneer the decree was already fully satisfied and there was an overpayment of Shs.619.476.53.

The court ordered that in restitution the plaintiff do pay the said money to the applicant.

The application is supported by affidavit of Martin Odero Owiti sworn on 29/11/2011. It is sworn that an extracted order of the court with penal notice was served upon the plaintiff as shown on in exhibit "moo5".

It is sworn that todate the vehicle has not been released to defendant. Neither has money been paid. The affidavit is together with exhibits which show that the Deputy Registrar Mrs. Gichohi found overpayment Shs.619,476/53.

Upon hearing Mr. Bundotic in absence of the two counsel Kong'o Omogeni and Kibunja & Associates I am satisfied that the orders made by this court are valid and within powers of court to order restitution I grant the orders sought and order the plaintiff to forthwith release the said motor vehicle namely number KAV 448V within next 7 days from today.

Judgment is hereby entered against the plaintiff for defendant in the sum of Shs.619,476/53 to carry interest from date 25/2/2011 at court rates until payment in full.

In default of payment execution to issue.

Further order: The costs of this application to be paid by respondents jointly and severally.

Orders accordingly.

Dated and Delivered at Nairobi this 19<sup>th</sup> day of January, 2012.

**J. KHAMINWA**

**JUDGE**

19/1/2012

Coram: Khaminwa, J

Court clerk – Mary

Mr. Odhiambo holding brief for Bundotich for defendant applicant

Ruling read in his presence.

**J. KHAMINWA**

**JUDGE**