



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**CIVIL MISCELLANEOUS APPLICATION 76 OF 2006**

**JANE SIFUNA JUMA..... APPLICANT**

~VRS~

**THE CHAIRMAN KIMILILI LAND DISPUTES TRIBUNAL.....RESPONDENT**

**AND**

**DISMAS ZACHARIA HARUN**

**HAJI ABDUL WEKESA MAUNGO.....INTERESTED PARTIES**

**AND**

**EMMANUEL OTIANGALA t/a KURONYA AUCTIONEERS.....AUCTIONEER**

**RULING**

On 29/9/2010 judgment was delivered by Justice D. A. Onyancha wherein the award by Kimilili Land Disputes Tribunal and the order of the Resident Magistrate's Court Kimilili adopting the award were removed into this court by order of *Certiorari* and quashed. The *ex-parte* Applicant was ordered to be paid costs by the Respondent and the Interested Parties. On 4/3/2011 the Interested Parties filed a motion to have the judgment and all consequential orders to be set aside to enable the matter to be heard afresh. In the meantime, it was sought that there be temporary stay of execution to await the hearing and determination of the application. The property of the Interested Parties had been attached and was slated for sale. On the same day an order of stay of sale was granted. On 11/7/2011 the court directed that the application be disposed of by way of written submissions and mention be on 8/11/2011. The application has not been heard and determined.

In the meantime, the auctioneer (Manuel Otiangala t/a Kuronya Auctioneers) filed a bill of costs which was taxed at Ksh.116,601/=. The auctioneer sought to attach and sell the Interested Parties' goods to recover his charges. This is what led to the present application which seeks the review, variation or setting aside of the Deputy Registrar's orders made on 13/10/2011 on the basis that it was premature given that there was on record the application to set aside the judgment in which application stay had been granted.

I agree that until the application to set aside the *ex-parte* judgment is heard and the court makes direction as to which party will pay costs what the auctioneer is seeking is a side-show, as it were. His bid to tax his costs/charges was premature.

Consequently, the order of the Deputy Registrar taxing those costs and the consequential certificate of costs are recalled and set aside. The auctioneer is asked to pay costs of this application.

Ruling delivered in open court this 15<sup>th</sup> day of March, 2012.

**A. O. MUCHELULE**  
**JUDGE**