



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAKURU  
Civil Appeal 3 & 2 of 2006**

**AHMED HASHI ADEN T/A**

**TORRY TRANSPORTERS COMPANY.....APPELLANT/  
APPLICANT**

**VERSUS**

**MOSES KIPKEMOI SIONGOK.....1<sup>ST</sup>  
RESPONDENT/APPLICANT**

**NICHOLAS RONO SIGILAI.....2<sup>ND</sup>  
RESPONDENT/APPLICANT**

**RULING**

This ruling is in respect of the notice of motion dated 3<sup>rd</sup> April, 2012 brought under **Section 3A** and **Section 95** of the **Civil Procedure Act** and **Order 22 Rule 59** of the **Civil Procedure Rules**, seeking enlargement of time fixed by the court to comply with the orders of court issued on 7<sup>th</sup> March, 2012, stay of execution and that the notification of sale be declared irregular and the respondent be ordered to return the attached goods.

The application is premised on the grounds that the applicants' goods have been attached in execution of this court's decree; that the goods attached by the auctioneers were not included in the proclamation dated 29<sup>th</sup> February, 2012 and that there was never a proclamation of the applicant's movable assets; that the proclamation made by the auctioneers on 29<sup>th</sup> February, 2012 was against the 1<sup>st</sup> applicant, Moses Kipkemoi Siongok and not the 2<sup>nd</sup> applicant whose property has been advertised for sale; that the time within which the applicants were to comply with the orders of the court of 7<sup>th</sup> March, 2012 lapsed before they could raise the amount ordered and that the applicants are willing to comply with the orders by depositing in a joint account in the names of their advocate and the respondent's advocate the sum of Kshs. 250,000/=.

Learned counsel for applicants submitted that they were unable to raise the amount ordered by the court due to lack of finances as they are farmers with meagre income; that the proclamation was done on the wrong person as the attached property belongs to the 1<sup>st</sup> applicant as opposed to the 2<sup>nd</sup> applicant against whom the initial proclamation was done; that the applicants bear different burdens and that one cannot bear another's burden on costs.

Learned counsel for the respondent opposed the application and submitted that the application is *res judicata*; that the applicants have not applied for review of the amount ordered to be deposited. He contended that there was a proclamation and notification of sale and that there was no apportionment of liability as the decree was joint and several.

I have considered the foregoing submissions by counsel for the parties and the applicable law. It is clear that the applicants had earlier on made a similar application which was granted and time to comply enlarged.

But that *per se* is not a bar to them to return to court to seek further extension of time. They have sufficiently explained their inability to raise the security. Now that they have been able to do so and are ready and willing to deposit the security, it is only just that they be granted the orders sought. The respondent will not suffer any prejudice. It is therefore ordered that time to deposit the security be and is hereby extended for further fourteen (14) days from the date hereof.

Costs to the respondent.

**Dated, Signed and Delivered on this 27<sup>th</sup> day of July, 2012.**

**W. OUKO  
JUDGE**