



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**MISC. CIVIL APPL. NO. 82 OF 2005**

**RAJNI K.SOMAIA ..... APPLICANT**

**VERSUS**

**CANNON ASSURANCE (K) LIMITED ..... RESPONDENT**

**RULING**

The application before court is dated the 19<sup>th</sup> of October, 2005 brought under Section 3, 3A & 94 of the Civil Procedure Act, Order 20 rules 6, 7, 11(2), Order 21 rule 2(2) of Civil Procedure Rules. The application seeks for the following:-

1. That warrants of attachment and sale issued to Keysian Auctioneers be declared null and void and the same be recalled, and returned to the court.
2. That the firm Rajni K. Somaia be ordered to pay for the court brokers charges if any.
3. That Kshs 3,717,697/= be recorded as certified and paid to the applicants leaving a balance of Kshs 5,255,274.90.
4. That without prejudice to the hearing and determination of KSM HCCA NO. 44 and 45 of 2005 the remaining balance be paid by monthly instalment of Kshs 1,000,000/= or any such instalments as the court may direct, alternatively payment be postponed for three months.

The application is supported by the affidavit of **Justus Maina Mukoma** and the grounds on the face of the application as follows; the applicant applied for warrants of attachment without compliance with mandatory provisions of Section 94 of the Civil Procedure Act and Order 20 rules 6 & 7 of the Civil Procedure Rules (now replaced); the respondent has already paid the applicant Kshs 3,717,697, the respondent insurers are yet to settle their share as per treaty of participation to enable the respondent to pay the total taxed costs.

Although the respondent/applicant filed grounds of opposition the same was filed after a period of 5 years and no proof that the same was served upon the applicant/respondent. The court in the circumstances strikes out the same for non-compliance with laid down procedures. The application therefore remains unchallenged. There is no doubt that the respondent did not comply with the mandatory provisions of Section 94 and Order XX rule 20 of the Old Civil Procedure Rules and as such there was non-compliance with the law in the execution of the decree I hereby grant prayer 1 & 2 of the application.

**DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2011.**

**ALI-ARONI**  
**JUDGE**

**In the presence of:**

----- for Applicant(s)

----- for Respondent(s)

AA/ha0