



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CIVIL APPEAL 1034 OF 2007**

**SOCFINAF COMPANY LTD .....APPELLANT**

**V E R S U S**

**MARY AKUMU KEYA .....RESPONDENT**

**AND**

**ROBERT MWANGI KAMAU .....INTERESTED PARTY**

**R U L I N G**

Judgment was issued by the subordinate court herein against the Appellant without notice to it. Subsequently, its motor vehicle registration **No KAG 537Y** was attached in execution of that decree of the lower court. The Appellant then applied to this court by **notice of motion dated 7<sup>th</sup> January, 2008** for orders to lift the said attachment and for the release of the motor to the Appellant.

That application was not opposed by the Respondent (who was the beneficiary of the decree of the lower court). The application was allowed by a ruling delivered by this court on 5<sup>th</sup> February, 2008. In allowing the application the court observed that the attachment of the Appellant's motor vehicle was irregular in that there was no proclamation as required by rule 12(b) of the **Auctioneers Rules 1997**. The court ordered that the motor vehicle be released forthwith and unconditionally to the Appellant.

An interested party then filed an application by **notice of motion dated 5<sup>th</sup> March, 2008**. The Interested Party says that he was the purchaser of the motor vehicle at a public auction. He sought three main orders as follows pending hearing and determination of the appeal herein:-

1. That the Appellant be restrained from selling, transferring or disposing of the motor vehicle to a third party.
2. That the order of the court of 5<sup>th</sup> February, 2008 (by which the motor vehicle was released unconditionally to the Appellant) be set aside.
3. That the motor vehicle be released to the Interested Party.

An interim order restraining the Appellant from selling, transferring or disposing of the motor vehicle was granted and is still in place.

I have read the supporting and opposing affidavits. I have also considered the written submissions filed on behalf of the parties, including the authorities cited.

The Interested Party herein has not formally applied to be made a party in this appeal. It is thus doubtful that he can apply as he has for orders that would no doubt substantially affect the appeal now before the court. More importantly, the justice of this matter at this interlocutory stage would be best served by an order preserving the subject-matter of the suit pending disposal of the appeal. That subject-matter is the motor vehicle in question.

There is already an interim order preserving the motor vehicle. I will confirm that interim order pending disposal of the appeal. In effect therefore prayer No 2 of the notice of motion dated 5<sup>th</sup> March, 2008 is hereby granted. Prayers 3 and 4 are refused. Costs of the application shall be in the cause. Those shall be the orders of the court.

**DATED AT NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2010**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2010**