



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL SUIT NO. 487 OF 2007**

**SOFIA YUSUF KANYARE .....PLAINTIFF**

**VERSUS**

**ALI ABDI SABRE ..... 1<sup>ST</sup> DEFENDANT**

**EDWARD NTONGA MAIRABU .....2<sup>ND</sup> DEFENDANT**

**AND**

**AMINA HASSAN.....OBJECTOR**

**RULING**

The Chamber Summons of 23<sup>rd</sup> June, 2009 seeks prayer nos. 3, 4, and 5. Thereof, namely,

**3. That the motor vehicle registered number KBE 378R be declared the absolute property of the Objector and be delivered back to her in its condition as at the time of attachment.**

**4. That Zacharia W. Barasa t/a Siuma Traders do pay to the Objector mense profits of Kshs.5,000.00 for each day that the Objector's motor vehicle has remained unlawful attached and in his custody, and specifically from 15<sup>th</sup> April 2009 until such time as the auctioneer will have sufficiently and adequately complied with Order number three (3) above.**

**5. That the costs of this application be provided for.**

The application is premised under Sec. 3A and 63 (e) of the Civil Procedure Act and Order 21 rules 56 and Order 49 Rule 5 of the Civil Procedure Rules.

The application is supported on the grounds set forth on the face of the application and on the supporting affidavit sworn by the Applicant on 23<sup>rd</sup> June, 2010.

According to her, on 15<sup>th</sup> April 2009, while her motor vehicle bearing registration No. KBE 378R was driven by the 1<sup>st</sup> Defendant, the auctioneer Zacharia W. Barasa trading as Siuma Trader Auctioneers unlawfully and forcefully took away the said motor vehicle from the 1<sup>st</sup> defendant. She filed the Notice

of Objection and stay of execution was obtained. From the records of the case, I do note that Notice of Objection of 29<sup>th</sup> April 2010 was filed on 30<sup>th</sup> April, 2010 and Notice of Objection was issued on 8<sup>th</sup> May, 2009 along with Notice of Stay of Execution.

In response to the said Notice, the Respondent filed a reply by stating that the motor vehicle was sold by the auctioneers on 27<sup>th</sup> April, 2009. I also note from the record that the proclamation of 17<sup>th</sup> March, 2009 notifying the schedule of moveable properties attached does not include the motor vehicle in question.

Then there is a proclamation dated 27<sup>th</sup> March, 2009 showing only the motor vehicle in question which is removed and Notification of Sale of movable properties gives notice of sale on 25<sup>th</sup> April, 2009, although the copy of the later proclamation is not legible.

The contention of the applicant is that the said sale is/was unlawful as it contravenes Rule 12 (c) and 12 (f) of the Auctioneers' Rules and Order 21 Rule 62 of the Civil Procedure Rules.

As against the above contentions and facts, the Respondent submits that after the response to Notice of Objection was filed and served, the only recourse for the objector was to take proceedings to establish her claim which she failed to do and thus under order 21 Rule 58 of Civil Procedure Rules the objection is deemed to have been waived and the Decree-holder was entitled to proceed with attachment and execution.

I do further observe that the response to the Notice of Objection was filed on 12<sup>th</sup> May, 2009 and the sale was already finalized on 27<sup>th</sup> April, 2009. I also note with great concern that even till to-date, the court is not shown how the attached motor vehicle was sold and whether any public notice of its sale was given.

Order 21 Rules 59, 60, 61 and 62 of Civil Procedure Rules provide for the procedure to be followed before the attached property is sold. None of the said process is shown to have been followed by the Decree-holder. I may not dwell any further on the facts of this matter which have been specified hereinbefore. I can only observe and find that the Decree-holder and the auctioneers involved in this matter have thrown their caution and laws out of the window.

This court cannot uphold the flagrant breach of Rule of Law and agreeing with the applicant, I find that the sale of the motor vehicle KBE 378R by the Respondents is unlawful and fatally defective.

I further order that the alleged sale of the motor vehicle in question be nullified and the same be returned to the objector forthwith.

As regards her claims of damages, for non-user and wrongful sale I cannot make any order as of now without appropriate details. The applicant is at liberty to pursue the said relief appropriately.

I also order that the Respondents pay costs of the application.

**Dated, Signed and delivered at Nairobi this 11<sup>th</sup> day of March, 2010.**

**K. H. RAWAL**

**JUDGE**

**11.03.2010**