



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Civil Appel 67 of 2005**

**SIMON NJIRU.....APPLICANT/APPELLANT**

**VERSUS**

**ANNA WANJIRA.....1<sup>ST</sup> RESPONDENT/PLAINTIFF**

**PETERSON KARIUKI.....2<sup>ND</sup> RESPONDENT/PLAINTIFF**

**ESTHER MUTHONI.....3<sup>RD</sup> RESPONDENT/PLAINTIFF**

**JOHNSON MBOGO.....4<sup>TH</sup> RESPONDENT/PLAINTIFF**

**RULING**

By Chamber Summons dated 20/11/2007 the Appellant Simon Njiru seeks orders that E.M. Njiru advocate be ordered to meet the cost of replacing the applicants good he caused to be auctioned illegally in Civil Case No.287/2001 and that E.M. Njiru Advocate be ordered to pay to the Applicant Special and General damages for illegal auction of his property and that the Applicant be exempted from paying court filing fees for all applications meant for reversing court orders made when the court was under misleading. Lastly costs of this application to be provided for. The grounds on which application is grounded are written on the face of application all numbering 5 namely:-

1. Court set aside proceedings in CC.287/2001.
2. And the advocate was ordered to pay costs incurred
3. The advocate caused illegal auction of Applicants property which included business and domestic goods.
4. The advocate cause public embarrassment by such auction
5. The advocate does not wish to replace the goods he caused to be sold.

According to auctioneer's Notice several items mentioned under ground 5 were auctioned. The application was heard and both parties addressed the court.

Firstly the court notes that no provision of law is invoked by the Applicant. It is not clear under which law and provisions of law the court is to employ. Also the claims made by Applicant against the Advocate can only be resolved by trial with parties giving evidence and calling witness for instance evidence would be required to decide the costs of replacing Applicant goods auctioned in suit 287 of 2001 Special and General damages require to be assessed by evidence to determine how much damages to be paid to applicant. The issue of court fees exemption involves proof that the applicant can sue as a pauper (under procedure provided by law.) Evidence shall be required to assess the true value of Applicants items listed under ground 5 – T.V's Singer Sewing Machine and Panasonic Radio. According to the Civil Procedure Rules a Chamber Summons is not for dealing with matters where evidence is to be called and trials are to be conducted in open court. Evidence is confirmed to affidavits.

I have considered the submissions of both parties. It is my finding that the Applicant has adopted civil procedure which is not suitable to resolve his disputes. Furthermore these proceedings relate to an appeal and appeal procedure cannot accommodate the hearing of these disputes. And again the advocate Mr. E. Njiru is not a party to these proceedings he is acting instructions therefore it may be necessary to seek remedy in another form. For these reasons I dismiss the application dated 20/11/2007.

No order as to costs.

Dated this 8<sup>th</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**8/5/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Simon Njiru**

**Mr. Njiru E. Advocate**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**