



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1069 of 2005 (OS)**

**LILIAN WANJIRU MWANGI .....PLAINTIFF**

**V E R S U S**

**S. MUTHAURA KIOME .....1<sup>ST</sup> DEFENDANT**

**JOHN K. MWORIA .....2<sup>ND</sup> DEFENDANT**

**AND**

**BEATRICE NKUENE MUTAHI .....1<sup>ST</sup> OBJECTOR**

**VELMA MWENDWA .....2<sup>ND</sup> OBJECTOR**

**R U L I N G**

This is an application (chamber summons dated 16<sup>th</sup> April, 2007) challenging the attachment of motor vehicle Regn. Number KAW 537H in execution of decree herein. It is brought under Order 21, rules 56 and 57 of the Civil Procedure Rules. At the hearing of the application it was conceded by the Plaintiff/Decree-Holder that the motor vehicle belongs to the 2<sup>nd</sup> Objector, VELMA MWENDWA, and that it should never have been attached. In a preliminary ruling therefore, I ordered that the motor vehicle be released forthwith and unconditionally to the 2<sup>nd</sup> Objector. It is not quite clear why the 1<sup>st</sup> Objector, BEATRICE NKUENE MUTAHI, joined in the application.

It is the duty of an auctioneer to ascertain that the property to be attached belongs to the judgment-debtor. It is apparent that the auctioneer in the instant case did not do so in respect to the motor vehicle Regn. Number KAW 537H.

I will in the circumstances allow the application in prayers 2 and 3. I will also award the costs of the application to the 2<sup>nd</sup> Objector as against the Plaintiff/Decree-Holder. The issue of the auctioneer's charges will have to be sorted out as between the auctioneer and the Plaintiff/Decree-Holder. Those will be the orders of the court.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JUNE 2007**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED THIS 22<sup>ND</sup> DAY OF JUNE 2007**