

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE 1069 OF 2005 (OS)

LILIAN WANJIRU MWANGIPLAINTIFF

V E R S U S

S. MUTHAURA KIOME1ST DEFENDANT

JOHN K. MWORIA2ND DEFENDANT

AND

BEATRICE NKUENE MUTAHI1ST OBJECTOR

VELMA MWENDWA2ND OBJECTOR

RULING

This is an application (chamber summons dated 16th 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 2nd 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 2nd Objector. It is not quite clear why the 1st 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 2nd 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 18TH DAY OF JUNE 2007

H. P. G. WAWERU

JUDGE

DELIVERED THIS 22ND DAY OF JUNE 200