

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO

Civil Case 105 of 2004

MOSES KIPKURUI KORIR.....1ST PLAINTIFF

JIMMY JOSH RAMDAS.....2ND PLAINTIFF

VERSUS

ALEXANDER KIPLANGAT KIGET.....DEFENDANT

AND

NATHAN KEROR OBJECTOR

RULING

The objector, Nathan Keror, has filed an application under **Order XXI Rules 56 and 57 of the Civil Procedure Rules** seeking the order of this court for the attachment of his three cows to be lifted. The grounds in support of the application are that M/S Solai Agencies were instructed to attach the properties of the defendant, Alexander Kiplangat Kiget but instead attached his three cows which were grazing in the farm of the defendant. The objector therefore prayed for the orders of this court to lift the said attachment and order the said M/S Solai Agencies to restore the said cows to him or in the alternative pay him the value of the said cows. The application is supported by the annexed affidavit of the objector. The application is opposed. The plaintiffs, Moses Kipkurui Korir and Jimmy Josh Ramdas have filed grounds in opposition to the application. In the said grounds of opposition, they have stated that the application by the objector had been overtaken by events as apparently by the time the application was served, the said M/S Solai Agencies had already disposed off the said three cows which had been attached.

At the hearing of the application, I heard the submission made by Mr. Bii on behalf of the objector and by Mr. Motanya on behalf of the plaintiff. From the said submissions, it is not in dispute that the said three cows were attached on the 23rd of June 2006 and sold on the 29th of June 2006 in a Public Auction. The objector filed his objection to the attachment on the 23rd of June 2006. He obtained an order staying the said attachment. I have perused the record of this court. There is no evidence that upon the said objection proceedings being filed and an order staying the said attachment being issued, the same was served upon M/S Solai Agencies. There is no affidavit of service on record. In the absence of such affidavit of service, the contention by the plaintiff that they had not been served with the said order staying the attachment of the three cows cannot be but true. Similarly, there was no order preventing M/S Solai Agencies from selling in a Public Auction the said three cows which were attached.

Although there is evidence that the said attached cows were sold by the auctioneer to recover the costs due to the plaintiffs in this suit before the expiry of the ten (10) day notice period as required by the law, this court cannot set aside the said sale or order that the objector be paid the value of the said three cows. The Auctioneer was not aware of the order issued by this court. Even if this court were to find that the said sale was conducted irregularly, the remedy for the objector lies in his filing a suit for compensation as provided by **Order XXI rule 69 of the Civil Procedure Rules** which provides that;

“No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining an injury by reason of such irregularity at the hand of any other person may

institute a suit against him for compensation, or (if such a person is a purchaser) for the recovery of the specific property and for compensation in default of such recovery.”

In the premises therefore it is clear that the application filed by the objector lacks merit and it is hereby dismissed with costs.

The objector is advised to pursue an appropriate remedy as provided by **Order XXI rule 69 of the Civil Procedure Rules.**

DATED at KERICHO this 2nd day of November 2006

L. KIMARU

JUDGE