



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

**Civil Suit 369 of 2005**

**LEONARD N. K. MOSS.....PLAINTIFF**

**VERSUS**

**VILLA CARE LIMITED.....1<sup>ST</sup> DEFENDANT**

**KEYSIAN AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Applicant applies for an interlocutory order that vehicle KAR 864E be detained by the Commissioner of Police and preserved and an injunction issue to restrain the transfer of the said motor vehicle.

The Applicant as he admits was in arrears in payment of rent. The 1<sup>st</sup> Respondent instructed the 2<sup>nd</sup> Respondent to levy distress which was duly done.

As a result the said vehicle having been proclaimed was eventually sold at a public auction to a third party.

The Applicant in order to succeed must show he has a prima facie case with a probability of success and damages would not be an adequate remedy.

The Applicant in my view comes too late. Even if there were irregularities in the distress process, the vehicle having been sold at public auction it is too late now to reverse the process. The purchaser has ostensibly a good title to the vehicle and cannot be disposed of it.

In the result the Applicant is only entitled to pursue a claim for damages under Section 26 of the Auctioneers Act. I therefore dismiss this application with costs to the Respondents. In my view this suit should be heard as quickly as possible in respect of damages.

**DATED and DELIVERED at NAIROBI on 20<sup>th</sup> April 2005**

**P.J RANSLEY**

**JUDGE**