



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**  
**Civil Case 312 of 1997**

**JOHN KISORIO ..... PLAINTIFF**

**VERSUS**

**AFRICAN HIGHLAND PRODUCE ..... DEFENDANT**

**RULING**

The application before me has been taken out by AFRICAN HIGHLANDS PRODUCE COMPANY LTD., which I shall now refer to as ‘the company’, against John Kisorio (hereinafter called ‘the respondent’).

The company prays that ‘*the warrants of attachment and notification of sale issued herein in respect to the Defendant’s/applicants Motor Vehicle Registration Number KAL 915P be declared null and void*’. It also prays for costs.

It bases its application on the following grounds:

- (a) *That on 12/6/2000 this court delivered a ruling on the Defendant/Applicant’s application for stay of execution pending the hearing and determination of the appeal preferred herein.*
- (b) *That the Defendant/Applicant’s application dated 19/3/2000 was allowed on condition, inter alia, that the Defendant/Application do pay to the plaintiff the sum of K.Shs. 400,000/- being part of the decretal sum.*
- (c) *That on 27/6/2000, the Defendant/Applicant in compliance with the Court order deposited the said sum of K.Shs. 400,000/- into Court for onward transmission to the Plaintiff/Respondent, the Defendant having obtained an order extending the time for compliance with the order of 12.6.2000 by a further 14 days from 26.6.2000.*
- (d) *That the plaintiff/Respondent has attached the Defendant/Applicant’s motor vehicle Registration Number KAL 915P.*
- (e) *That the Plaintiff/Respondent has gone a head and issued a notification of sale of the attached motor vehicle on 21/7/2000.*
- (f) *That the said attachment and notification of sale are null and void in law as they clearly*

*contravene set out legal principles.*

*(g) That the proclamation and attachment of the Defendant's motor vehicle was done at Kericho by a Court Broker without jurisdiction of over the said area.*

*(h) That by the time the Plaintiff went to withdraw the amount of money deposited in Court, there was some additional Court fees which was due and payable by the Plaintiff/Respondent which sum the Plaintiff/Respondent has not paid.*

*(i) That, the law is that no action is to be taken unless and until additional court fees is paid and therefore whatever steps the Plaintiff/Respondent has taken after judgment are null and void including the taxation and execution of the warrants of attachment.*

*(j) THAT additional Court fees forms part of party and party*

*Costs (disbursements) and having not been addressed at taxation, it is clear that party and party costs had not been ascertained in terms of Section 94 of the Civil Procedure Act and as a result no execution could be undertaken without leave of the court*

Though he does not deny the fact that he had not paid the full filing fees, which in my mind meant that he should not have had any audience before the court prior to paying the full filing fees, the respondent who has filed his replying affidavit however depones that the company has yet to satisfy the decree in full judgment. He also depones and has been able to demonstrate that the auctioneer had actually proclaimed the subject vehicles before the proposed sale.

He further depones that the Deputy Registrar of this court had extended the auctioneers jurisdiction to enable him execute, which I must state from the outset was illegal as it is only the Auctioneers Board, which is empowered to deal with issues of jurisdiction. The Deputy Registrar does not have the relevant jurisdiction to deal with such issues at all and in the circumstances having acted outside his authorized area of jurisdiction the attachment by the said auctioneer was not only illegal, but also null and void.

The upshot of all this is that I find that the company has a meritorious application and I do in the circumstances grant it the order that it seeks. It shall also have the costs of this application.

Dated and delivered at Eldoret this 14<sup>th</sup> day of December 2005.

JEANNE GACHECHE

Judge