

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Appeal 715 of 2001

KENYA TEA DEVELOPMENT AGENCY LTD.....APPELLANT

VERSUS

KIMANI KINYANJUI.....RESPONDENT

RULING

The question arises as to who should pay the costs of distress levied by the Respondent against the Applicant's goods. The proclamation is for Kshs 222,160 and Auctioneer fees to be advised.

The Applicant admits he was in arrears and paid a sum of Kshs 204,819 and Kshs 70,000 as set out in his Further Affidavit of the 2nd December 2004.

The right of the Respondents to levy distress is contained in my judgment in **HCCC No 114 of 4004 and the case of Riungu Vs Rungu Civil Appeal No. 34 of 1989.**

If the tenant is in arrears of rent, the landlord is entitled to distress and the tenant should bear the costs.

In this case, it is for the Applicant to pay. I grant order (a) of the Chamber Summons of the 22nd November 2004 subject to and on condition that the Applicant pays the auctioneers charges before release of the goods. Costs Respondent of the Application.

DATED AND DELIVERED ON 9TH DECEMBER 2004.

P.J RANSLEY

JUDGE