

REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT ELDORET

CIVIL APPEAL NO. 150 OF 2016

SECURITY GROUP (K) LTD...APPELLANT

VERSUS

SAMUEL ITOTIARESPONDENT

RULING

1. This matter has been compromised by a consent dated **11th December 2019** and filed in court on 16.12.2019 where Respondent is to pay the appellant the taxed party to party costs by instalments. The only issue which remains for determination is who ought to bear the auctioneer's costs.

2. The background to this matter is that the appellant/deeree-holder [**SECURITY GROUP KENYA LTD**] obtained a decree and warrants of attachment and sale which were issued to **MS LIFEWOOD TRADERS AUCTIONEERS** against **SAMUEL ITOTIA** (Respondent) to recover a sum of Kshs.215,025.

GROUP NINE SECURITY LTD, and **NAOMI CHEPKEMBOI KIBET** (Objector) then filed an application seeking orders of stay for fear that the proclaimed goods would be attached and sold; yet the objectors were the registered legal owners with a beneficial interest of the proclaimed goods, which they had acquired for purposes of running their company.

3. It was further stated that the Respondent (Judgment debtor) had no proprietary interests in the proclaimed goods being office furniture and a motor vehicle. Incidentally the objectors were not party to the initial suit.

4. The appellant had explained in its grounds of opposition that the judgment debtor had offered the attached goods and properties to the auctioneer to execute the warrants of attachment. This is not denied by Respondent. I need not delve further – surely he who calls the piper must equally dance to the tune. The Respondent had failed to pay costs – this is what propelled appellant to file the application that was eventually compromised. If the Respondent had settled the matter ab initio, this matter would not have been escalated to the point of instructing the auctioneers.

I am persuaded that the auctioneers costs must and are ordered to be borne by the Respondent.

DATED, SIGNED and E-DELIVERED at ELDORET this 22nd day of May 2020

H. A. OMONDI

JUDGE