REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 5258 OF 1989

WAIRIMU GITHUA.....PLAINTIFF
versus
PETER MUGO NGANGA.....1ST DEFENDANT
JOHN MUTURI NGANGA.....2ND DEFENDANT

R U L I N G

The issue herein I believe is one. Who should bear the storage charges incurred as a result of an attachment of the motor vehicle registration no. KRZ 999 belonging to the objector King'ora Estate Limited

The objector is not a party to these proceedings. I am also told from the bar that Mr. Peter Mugo Nganga is also no longer a party to these proceedings.

When the objection to the attachment was raised the learned counsel for the plaintiff authorised the release of the motor vehicle. this was not done as the auctioneer's charges had not been paid. But that is not the concern of the objector whose legal capacity is different from any other party.

Ordinarily, whoever moves to make an attachment was the duty to ascertain the identity or ownership of the property to b attached. If it then happens that wrong property has been attached it is the attaching party who should bear the costs occasioned thereby. The owner of the property wrongfully attached is entitled to possession of the property unconditionally.

And so I now order that the said motor vehicle registration number KRZ 999 shall be released to the objector forthwith and unconditionally.

The auctioneer must have incurred costs. Indeed that is why this matter has reached this point. He was instructed by the advocates for the plaintiff. He has to recover those costs from the said advocates but that shall not be a condition for the release of the said motor vehicle as the objector is an innocent pat.

The advocates for the plaintiff of course are at liberty to pass over the said costs to the judgment debtor. Those are the orders of the court.

Each party shall bear own costs of this application.

Dated at Nairobi this 13th day of November, 1998.

MBOGHOLI MSAGHA

JUDGE