



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 275 OF 2010

KENYA SHELL LIMITED.....PLAINTIFF

VERSUS

CHRISTOPER ODERO.....1ST DEFENDANT

FRANCIS AGWIGI DOBBY.....2ND DEFENDANT

R U L I N G

1. The subject matter of this ruling is the motion dated 20th June, 2019 taken out by the 1st Defendant/judgment debtor in which he sought for the following order: -

- i) This application be certified as urgent and the same be heard ex parte in the first instance for purposes of prayer (2) below;*
- ii) There be a stay of execution of the judgment and/or decree issued against the 1st Defendant herein pending the hearing and determination of this application inter partes on such date as may be ordered by the court or until further orders of the court;*
- iii) That the Honourable court be pealed to recall the order allowing the Notice to Show Cause by the Deputy Registrar on 19th June, 2019 for the committal of the 1st Defendant/Judgment –Debtor to civil prison pending the hearing and determination of this application inter partes on sun date as my be ordered by the court or until further orders of the court;*
- iv) The order for the arrest and committal of the 1st Defendant/Judgment-Debtor to civil prison herein on 19th June, 2019, be set and is hereby set aside *ex debito justitiae*;*

Alternatively to(4) above:

- v) The order for the arrest and committal of the 1st Defendant/Judgment-Debtor to civil prison herein of 19th June, 2019, be set and is hereby set aside;*
- vi) The costs of this application be provided for.*

2. The motion is supported by the affidavit of Boniface Omondi Oduor and that of Christopher Odero Otieno. The Plaintiff filed grounds of opposition to resist the motion.

3. When the motion came up for inter partes hearing, learned counsels appearing in this matter were invited to make oral submissions.

4. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavits and the grounds of opposition.

5. I have further taken into account the rival oral submissions. It is the submissions of the judgment debtor that he was arrested and committed to civil jail unprocedurally. It was pointed out that the Deputy Registrars did not give the 1st Defendant/Judgment Debtor chance to show cause hence the provisions of Articles 25, 29, 47 and 50 of the constitution were breached.

6. The Plaintiff/Decree Holder urged this court to dismiss the 1st Defendant's application stating that the whole process leading to the 1st Defendant's committal begun by way of a notice to show cause which was served upon the 1st Defendant.

7. It was further pointed out that the 1st Defendant in fact appeared and was given 30 days to file an affidavit to answer the notice to show cause by 16th May, 2019 but on the aforesaid date neither the 1st Defendant nor his advocate turned up in court nor filed any affidavit to answer the notice to show cause, prompting the Plaintiff/Decree Holder to apply for a warrant of arrest.
8. It is not in dispute that the judgment debtor was committed to serve 30 days in civil jail when he was brought before the Deputy Registrar under a warrant of arrest on 19th June, 2019.
9. The main complaint the judgment debtor has raised before this court is that he was not given a chance to answer the notice to show cause.
10. I have carefully perused the record and the ruling leading to the committal of the 1st Defendant. It is apparent from the record that the Judgment Debtor was served with a Notice to Show Cause which was fixed for hearing on 28th March, 2019. On the aforesaid date, the judgment debtor successfully applied to be given 30 days to file documents to answer the notice to show cause which was fixed for hearing on 29th April, 2019. The Deputy Registrar was not sitting on 29th April, 2019 hence the parties visited the court registry and fixed a hearing of the notice to show cause on 16th May, 2019. On this date neither the judgment Debtor nor his advocate turned up in court.
11. The Judgment Debtor also failed to file the necessary documents within the 30 days he had been given by the Deputy Registrar.
12. The Decree Holder successfully applied for a warrant of arrest which warrant was effected leading to the arrest of the Judgment Debtor.
13. On 19th June, the Deputy Registrar noted that the judgment Debtor had not settled the decree nor tendered any answer to the notice to show cause consequently the judgment debtor was committed to serve 30 days in civil jail.
14. It is therefore, clear that the judgment debtor was given an opportunity to show cause but he chose not to answer.
15. It cannot, therefore, lie in the mouth of the Judgment Debtor to state that he was no given a chance to show cause.
16. In the end, I find no merit in the motion dated 20th June, 2019. The same is ordered dismissed with costs to the Plaintiff/Decree Holder.

Dated, signed and delivered in Nairobi this 25th day of October, 2019.

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J. K. SERGON

JUDGE

In the presence of

..... for the Plaintiff/Decree Holder

..... for the 1st Defendant/Judgment Holder

..... for the 2nd Defendant