



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPLI. NO. 426 OF 2013

RACHEL MORAA TURUNGI..... PLAINTIFF

- V E R S U S -

RUTH SALLY LUMADI KIDAKE1ST RESPONDENT

JUSTUS MATUNDURA

T/A JUMBO LINK AUCTIONEERS.....2ND RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 18th February 2015 taken out by the defendants herein. In the aforesaid motion the defendants sought for the following orders:

- 1. THAT the honourable court be pleased to certify this application urgent and to hear the same exparte in the first instance due to the said urgency.***
- 2. THAT the honourable court be pleased to stay the execution of the warrant of arrest given in this case on the 29th July 2013 pending the hearing interpartes of this application.***
- 3. THAT the honourable court be pleased to set aside the warrant of arrest issued in this suit on the 29th July 2013.***
- 4. THAT costs of this application be provided for.***

2) The motion is supported by the affidavits of Ruth Sally Lumadi Kidake and Justus Matundura. When the motion came up for interpartes hearing the defendants were permitted to prosecute the motion exparte since the plaintiff did not file a response neither did she and her advocates turn up for the interpartes hearing of application despite having been served.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavits. As of now, the main prayer sought is for the setting aside of the warrant of arrest issued on 29th July 2013. The defendants have alleged that they were not served with the application which gave rise to the issuance of a warrant of arrest. They also claimed that they were never informed by their erstwhile advocate that a warrant of arrest had been issued against them on 29.7.2013. The defendants further argued that the order alleged they disobeyed were lifted hence those orders do not exist. I have carefully considered the uncontroverted facts deponed in the affidavits filed in support of the motion.

Attached to the affidavit of Ruth Kidake is a copy of court orders issued vide H.C. Misc. Application no. 133 of 2012 staying the execution of the warrant of arrest. There is also an averment that the Rent Restriction Tribunal lifted the orders. The 1st defendant avers that they were surprised to receive copies of the warrant of arrest on 10.2.2015 from the security staff of her employer. I am now satisfied that indeed the Rent Restriction tribunal lifted the orders that had required the restoration of the attached goods. It is now clear to me that there is need to grant the orders sought because I am convinced that the motion is meritorious.

4) Consequently, prayer 3 of the motion dated 18.2.2015 is allowed as prayed with costs to the defendants.

Dated, Signed and Delivered in open court this 22nd day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent