



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO 154 OF 2014**

**ELIAS MUTURI MWANGI.....PLAINTIFF**

**Versus**

**1. LSG LUFTHANSA SERVICES EUROPA/AFRIKA GMBH**

**2. LSG SKY CHEFS LIMITED.....DEFENDANTS**

**RULING**

**Informing a Person outside Jurisdiction of process of court**

[1] Service of court process on a person outside the jurisdiction of the court is specifically provided for under Order 5 of the Civil Procedure Rules (hereafter the CPR). And the prescriptions as to how it should be done have also been provided for under the said Order. However, Rule 22(3) of Order 5 of the CPR creates a kind of exception to the specific requirements on service of court process outside the jurisdiction of the court in the following manner:

***Nothing in this rule shall affect any practice or power of the court under which, when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the court may (without affecting to exercise jurisdiction over any person out of the jurisdiction) cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.***

[2] The Applicant sought to utilize Rule 22(3) of Order 5 of the CPR and asked the court to allow him to serve the application dated 23<sup>rd</sup> April, 2014 on the 1<sup>st</sup> Respondent by way of courier. The Applicant informed the court that 1<sup>st</sup> Respondent is resident in Germany, and the suggested mode of transmission of the application to the 1<sup>st</sup> Respondent will only serve as a means of informing the 1<sup>st</sup> Respondent ***of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.*** The reason given by the Applicant are that; 1) the application is urgent and was indeed brought under certificate of urgency; and 2) the urgency thereof may not allow time to follow the prescribed method of service.

[3] Mrs Otava opposed the application and emphasized that there is need for a formal application to be filed in court on the request to inform the 1<sup>st</sup> Respondent of the application dated 23<sup>rd</sup> April, 2014. She also canvassed another issue; that all proceedings should be had only after the 1<sup>st</sup> Respondent has been informed of these proceedings.

## **COURT TAKES THE FOLLOWING VIEW**

[4] I take the view that under Rule 22(3) of Order 5 of the CPR, there is really no absolute or strict requirement that a formal application should be filed. Except, it is desirable for the party applying to adopt an approach which will enable a proper laying of the request before court and allowing the parties to engage meaningfully on the request made. Ordinarily, a formal application supported by an affidavit or concise grounds would be preferable. I illustrate this by way of example; the application herein was made orally and did not create much room for Mrs Otava to answer to it in an effective manner. Equally, although the Applicant stated that the application was urgent, he was not able to demonstrate to the court that this case relates to rights or property which would need immediate relief. That surely is a requirement under the Rule and would need a careful and meticulous presentation. The Applicant just left to the court to grope in the voluminous pleadings to ascertain that aspect. That is most untidy.

[5] Having said that, I have perused the pleadings and reveal that the case herein is about infringement of copyright which is a right within the intellectual property rights. It is an apt case on which the exception to the general rules of service outside the jurisdiction of the court would be invoked. Accordingly, I allow the application and direct that the Applicant do transmit the application dated 23<sup>rd</sup> April, 2014 to the 1<sup>st</sup> Respondent by a reputable courier that carries out international mail and parcel courier. The transmission is allowed by the court, without affecting to exercise jurisdiction over any person out of the jurisdiction, under Order 5 Rule 22(3) of the Civil Procedure Rules, and is only meant to inform the 1<sup>st</sup> Respondent of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing, or otherwise intervening. It is so ordered.

[6] With regard to the other issue on the fate of these proceedings as we await compliance with the order of the court issued under paragraph 5 above, the court is hesitant to issue a general prohibition especially because of the nature of these proceedings. Instead, the court is of the view that a hearing date should be taken by the parties so that the hearing date will also be transmitted together with the application in the manner order in paragraph 5 above.

**Dated, signed and delivered in open court at Nairobi this 29<sup>th</sup> day of April, 2014**

**F. GIKONYO**

**JUDGE**

**Mwenda Advocate for the Applicant**

**No appearance for the 1<sup>st</sup> Respondent**

**Mrs Otava Advocate for the 2<sup>nd</sup> Respondent**

**F. GIKONYO**

**JUDGE**