



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 511 OF 2007

DUNCAN KINYUA MUGAMBI.....PLAINTIFF

VERSUS

EDDIE MUTEGI NJORADEFENDANT

RULING

1. The Plaintiff herein is unrepresented. His suit as disclosed by the plaint is rather unique. He pleads that he has a judgment against the Defendant's wife, one SALOME WAMBUI NJORA, in **Nairobi HCCC No. 2073 of 2000** in the sum of KShs 280,000/00 plus costs of KShs 40,000/00. He has further pleaded that the said SALOME WAMBUI NJORA resides in the United Kingdom.
2. His case in the present suit is that the Defendant at one time frustrated execution of a warrant of arrest in execution of decree against the said Salome Wambui Njora when she had visited the country by playing "tricks and (leading) the (court) bailiff and ... police officers to a different direction from where (his) wife was". He therefore seeks the main relief that the Defendant be ordered to pay to the Plaintiff the decretal amount in Nairobi HCCC No 2073 of 2000 on behalf of his wife Salome Wambui Njora "...who now lives in the United Kingdom".
3. The Defendant duly entered appearance and filed defence. He denied liability and further pleaded, *inter alia*, that no cause of action against him was disclosed.
4. Interlocutory judgment had been entered against the Defendant on 10th August 2007 in default of defence. But it later transpired that a statement of defence had been duly filed and served. The interlocutory judgment was thus set aside by the court *suo motu* on 29th November 2007.
5. In doing so the court also pointed out that interlocutory judgment was in any case not available under the rules.
6. The Plaintiff then applied by **notice of motion dated 3rd December 2007** seeking the main orders that the Defendant's memorandum of appearance and statement of defence be struck out and interlocutory judgment be entered against him
7. The application is stated to be brought under **Order XXXV, rule 1(1)(a), (2) & (3) and 9** of the then **Civil Procedure Rules** (the **Rules**). **Section 3A** of the **Civil Procedure Act, Cap 21**, (the **Act**) is also cited.
8. The grounds for the application are to the effect that the Defendant has been hindering execution of

the decree in Nairobi HCCC No. 2073 of 2000 against his wife in the United Kingdom by failing to “explain the judgment-debtor’s movement in and out of the country, (her) place of residence and place of work in the United Kingdom”.

9. The application is supported by the Plaintiff’s affidavit in which he elaborated his grounds for the application. He has also raised the issue of the genuineness of the statement of defence, alluding that it is a forgery.

10. The Defendant opposed the application by replying affidavit sworn on 20th and filed on 22nd February 2008. The grounds of opposition that emerge there from include -

(i) That the suit itself is defective and the issues raised ought to be raised in Nairobi HCCC No. 2073 of 2000.

(ii) That the defence was properly filed and served.

(iii) That the defence raises a reasonable defence to the Plaintiff’s claim.

11. The Defendant also filed a notice of preliminary objection by notice dated 20th February 2008. The points of law raised are -

(i) That the plaint as drawn is fatally defective and does not raise a reasonable cause of action.

(ii) That the plaint as drawn offends the provisions of **Orders III, IV, V and VI** of the Rules and ought to be struck out.

This ruling relates to this preliminary objection.

12. I have considered the submissions of the Defendant’s learned counsel as well as those of the Plaintiff.

13. By the present suit the Plaintiff is seeking to enforce judgment he says he obtained in Nairobi HCCC NO. 2073 of 2000 against the Defendant’s wife who he says resides in the United Kingdom.

14. Any issues of enforcement of a judgment, particularly in the circumstances of the present case, ought to be raised and determined in the judgment suit. See **section 34 (1)** of the Act which provides-

“34. (1) All questions arising between the parties to the suit in which the decree was passed, their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

15. The Plaintiff has alluded in his plaint that the Defendant consented to judgment being entered in Nairobi HCCC No. 2073 of 2000. He appears therefore to regard him as a party in the said case. But there is no evidence that the Defendant is a party to the said judgment suit.

16. Be that as it may, the issues raised in the present suit are issues of execution of decree in Nairobi HCCC No. 2073 of 2000. They ought to be raised in that suit. Those issues do not constitute any legitimate or reasonable cause of action against the Defendant. The plaint as drawn does not disclose any reasonable cause of action against the Defendant. It is hereby struck out and the Plaintiff is struck out and the Plaintiff’s suit dismissed with costs to the Defendant. It is so ordered.

17. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now regained my full health.

DATED AT NAIROBI THIS 7TH DAY OF SEPTEMBER 2012

H. P. G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF SEPTEMBER 2012