



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 272 of 2012

Editorial Summary

1. *Civil Appeal*
2. *Subject of main suit*

DEFAMATION

- 2.1 *1ST Defendant, a newspaper company
publishes words that are defamatory.*
- 2.2 *Main suit prays for orders of injunction
to restrain defendants from publishing further
false information/defamatory information.*
- 2.3 *Inter alia – to account for moneys raised.*
- 2.4 *The 2nd defendant – Bill Kirk
The 3rd defendant – Carolyn Kirk
reside outside the jurisdiction of the court
and have not been served.*
4. *Application dated 8th August 2012*
 - 3.1 *Hon. Court grants orders for substituted service
to be effected against the 2nd & 3rd defendants
who reside in United Kingdom.*
 - 3.2 *Costs in cause.*
5. *No objection by Respondent No. 1/Original defendant.*

5. *Held:*

Application granted

6. *Obiter dictum:*

Mode of service

Order 5 r 29 Civil Procedure Rules

is compulsory.

7. *Case Law:*

NIL

8. *Advocates:*

i) *S.O. Ojienda instructed by M/s Ojienda & Co Advocates for plaintiff*

ii) *C.A. Nyairo instructed by Archer & Wilcox & Co Advocates for 1st defendant*

CHILD WELFARE SOCIETY OF KENYA

REGISTERED TRUSTEES PLAINTIFF

VERSUS

NATION MEDIA GROUP LTD t/a NATION NEWSPAPERS1ST DEFENDANT

BILL KIRK 2ND DEFENDANT

CAROLYNE KIRK 3RD DEFENDANT

RULING

I. INTRODUCTION

1. The applicant herein M/s Child Welfare Society of Kenya Registered Trustees filed suit against the three defendants on the 5th June 2012 for defamation inter alia. They prayed that an injunction do issue, restraining the defendants from further publishing the defamatory words and for the defendants two and three to account for the moneys that they had collected for the charitable society.

2. The applicant is described as a non-governmental organization which caters for children.

3. The 2nd defendant Bill Kirk and the 3rd defendant Carolyn Kirk both reside outside the jurisdiction of the court. They therefore have not been served with the proceedings of this case.

4. The applicant prays that service be effected outside the jurisdiction of the court with leave under Order 5 rule 21 & 22 of the Civil Procedure Rules.

5. There was no opposition to this application by the 1st respondent/1st defendant.

6. Under Order 21 r 6 Civil Procedure Rules it provides that:

“Service out of Kenya of a summons or notice of a summons may be allowed by the court whenever

a) _____

b) **Any act, ...**

c)

d)

e) **The suit is brought to enforce ... or to recover damages or other relief for or in respect of the breach of contract.**

f) **Made in Kenya**

g) **The suit is founded on a tort committed in Kenya.**

h)

i)”

(In this case an act has been committed in Kenya.)

7. Under Order 5 rule 22 dealing with services of the process or notice thereof out of Kenya.

8. Whereas the law does permit the service of process outside Kenya, this court does hereby give leave to the applicant to serve the summons outside Kenya.

9. As the two respondents No. 2 & 3 are residing in the Commonwealth, I am required to state the manner in which the summons are to be served.

10. The advocate recommends that he uses email or the DHL Courier to effect the said service. This form of service is not provided for in our procedure under the civil laws.

11. I would be guided that the process should be *mutatis mutachi* herein with service of foreign orders, Order 5 r 32 Civil Procedure Rules.

12. I would herein direct that service be effected by personal service upon the 2nd and 3rd defendant. The documents so served must be sealed by the High Court for use outside Kenya. That there be 60 days to enter appearance and file defence by 2nd and 3rd parties upon service.

13. Order 5 rule 29 deals with service of process where the countries are foreign and not part of the Commonwealth. This would not apply herein.

14. The costs be in the cause.

DATED THIS 31ST DAY OF OCTOBER 2012 AT NAIROBI

M.A. ANG’AWA

JUDGE

Advocates :

i) *S.O. Ojienda instructed by M/s Ojienda & Co Advocates for plaintiff*

ii) *C.A. Nyairo instructed by Archer & Wilcox & Co Advocates for 1st defendant*