



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 46 of 2009

KEYS LOCK ALARM AND AUTOMOBILE

CENTRE LIMITED..... 1ST PLAINTIFF/APPLICANT

MOHAMED YUSUF SAROYA.....2ND PLAINTIFF/APPLICANT

VERSUS

RAMA EXPORTS (INDIA).....1ST DEFENDANT/RESPONDENT

GAUTAM MHAJAN.....2ND DEFENDANT/RESPONDENT

RULING

The Applicant has filed a Chamber summons application dated 21st January, 2009 under section 3A and 63(a), (b), (e) of the Civil Procedure Act and order L rule 1 of the Civil Procedure Rules seeking five prayers as follows:

- 1. That the application be heard exparte and service be dispensed with in the first instance.**
- 2. That the application be certified as urgent.**
- 3. That the Honourable Court be pleased to issue a warrant to arrest the 2nd Defendant directing the 2nd Defendant to appear in court and show cause why he should not give security for his appearance.**
- 4. That in the alternative and without prejudice to the foregoing prayer, the Honourable Court be pleased to issue an order against the Defendants jointly and severally to furnish security of any property belonging to them and place the same at the disposal of the court or order the attachment of any property.**
- 5. That the costs of this application be provided for.**

Prayer 1 and 2 are spent.

The grounds are on the face of the application and are basically that the Plaintiff's case has high chances of success and that the 2nd Defendant who is a non citizen and who resides both in Kenya and in India, has no defence to the Plaintiff's case. The application is supported by an affidavit sworn by Sameer A. R.

Bahoor, one of the Directors of the 1st Plaintiff.

The 2nd Defendant was served with the application and has failed to file any papers. The 2nd Defendant is sued as guarantor to the 1st Defendant.

I have considered the application together with the affidavit sworn in support and the submissions by Mr. Bukoba for the Applicants.

The Plaintiffs' case is that between 1st July and 31st October, 2006, it entered into negotiations with the 2nd Defendant who is the Director and Agent of the 1st Defendant, for the 1st Defendant to supply to the Plaintiffs various pieces of solar panels valued at US\$ 70,000. It is contended further that the Plaintiffs paid the entire sum of US\$ 70,000. It is the Plaintiffs' case that the 1st Defendant supplied to it panels valued at US\$ 3,400 and that to-date it has not supplied the balance of the panels whose value is US\$ 66,600.. The Plaintiffs are seeking to have the 2nd Defendant arrested and brought before the court to show cause why he should not give security for his appearance, since the Defendants have no defence to the Plaintiffs' claim. In the alternative, the Plaintiffs have sought an order to be issued against the Defendants to furnish security or for the court to order attachment of any of their properties.

I am satisfied that this application was served upon the 2nd Defendant and that the 2nd Defendant has failed to file any papers to answer it.

Section 63(a), (b) and (e) of the Civil Procedure Act gives this court power to issue a warrant of arrest for a Defendant to show cause why he should not give security for his appearance; or to order him to furnish security, or to order an attachment of his property. The Court can also make such other orders as may appear to it to be just and convenient.

I have considered the application and I am satisfied that it is merited. I will issue a warrant of arrest in terms of prayer 3 as follows:

- 1. A warrant of arrest do issue against the 2nd Defendant directing the 2nd Defendant to appear in court and show cause why he should not give security for his appearance.**
- 2. The 2nd Defendant will pay for the cost of the application.**

Dated at Nairobi this 6th day of February, 2009.

LESIIT, J.

JUDGE

Read, delivered and signed in presence of:

Mr. Bukoba for the Applicants

LESIIT, J.

JUDGE