

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

Civil Suit 306 of 2007

FRANCIS MAINA MUTURI.....PLAINTIFF

VERSUS

ELIZABETH WANGECHI VOJVODIC1ST DEFENDANT

DAREN ANTHONY VOJVODIC.....2ND DEFENDANT

R U L I N G

By a chamber summons brought under order XXXVIII Rule 1(a) and (b) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, Francis Maina Muturi the plaintiff/applicant seeks an order that the court do issue a warrant of arrest for the 2nd defendant to be brought before this court to show cause why he should not furnish security for his appearance.

The plaintiff has brought a suit by way of a Plaint against Elizabeth Wangechi Vojvodic, 1st defendant and Daren Anthony Vojvodic the 2nd defendant, seeking judgment for Kshs.5.6 million being amount allegedly due to him from the 1st and 2nd defendants jointly and severally. It is the plaintiff's contention that the 2nd defendant is an Australian national and has no work permit or valid papers to stay in Kenya. The plaintiff is apprehensive that unless required to show cause why he should not furnish security for his appearance, the 2nd defendant may leave Kenya for Australia thus obstructing the execution of any subsequent decree that may be passed against him.

In response to the chamber summons, the 2nd defendant has filed a replying affidavit denying owing the plaintiff the sum of Kshs.5.6 million and contending that the transaction was between the plaintiff and the 1st defendant who is his wife, and a sister to the plaintiff. The plaintiff contended that he only signed the alleged acknowledgement in his capacity as husband to the 1st defendant. Admitting that he is an Australian citizen, the 2nd defendant contended that he has a valid Kenyan Visa and has no intention of leaving the jurisdiction of this court. The plaintiff gave undertaking by an advocate that he shall attend court whenever required to do so.

At the hearing of this application neither the defendants nor their advocates attended court despite having been duly served with a hearing notice. Having considered this application, it is evident that the 2nd defendant is an Australian national who has been residing in this country on the authority of a visiting Visa. That Visa was annexed to the 2nd defendant's replying affidavit and it is evident that the same expired on the 8th of August 2007. No evidence has been availed to this court to confirm whether the period of the said Visa has been extended. Given the fact that the 2nd defendant has not attended this court for the hearing of this application, and the explanation given in his replying affidavit being inadequate, and the 2nd defendant's advocate having only given an undertaking for his appearance in court on 28th June 2007, 2nd defendant has failed to show cause why the court should not order him to furnish security.

Further, the 2nd defendant has not denied knowledge of the plaintiff's claim or having signed the undertaking in respect of the claim. However, he maintains that he only did so in his capacity as the 1st defendant's husband.

Under the circumstances, I am satisfied that *prima facie*, the plaintiff appears to have a reasonable claim against the 2nd defendant. I find further, that there is merit in the fear that the 2nd defendant with intention to delay the prosecution of the plaintiff's claim, may abscond from the jurisdiction of this court. It is therefore, desirable that the 2nd defendant be required to furnish security for his appearance. Accordingly, I order that the 2nd defendant shall deposit in court money or other security whose value is equivalent to the some of Kshs.5.6 million. I award costs of this application to the plaintiff.

Signed and delivered this 25th day of January, 2008.

H. M. OKWENGU

JUDGE