

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 146 of 2008

DALBIT PETROLEUM LTD. PLAINTIFF

VERSUS

DONAS SEKWEKWE KALINDADEFENDANT

R U L I N G

Application dated 18/3/2008 brought under Order XXXVIII, Section 3A, 62 e of Civil Procedure Act seeking orders that warrant of arrest do issue against the defendant, the defendant to be brought to court to show cause why he should not furnish security for his appearance in the sum of USD152,319.17 and in the alternative motor vehicles listed be attached in satisfaction of decree that may be passed against him.

The grounds are set out in the application which shows that the defendant is a Rwandese and has been carrying on business with the plaintiff since 2004 as a result of which the plaintiff has granted defendant credit which now has arisen to USD152,319.17 and that the defendant has now ceased to do business with plaintiff. The defendant does not reside in Kenya and his whereabouts is not known. It is feared the defendant may remove himself and his assets outside the jurisdiction of this court.

The application is supported by affidavit of Margaret Mbaka for plaintiff. She has exhibited Transport Agreement with defendant and also documents supporting the claim. The provisions under which the application is made provides the circumstances under which orders may be made.

(i) that the defendant with intent to delay the plaintiff or to avoid any process of court or to obstruct or delay the execution of any decree that may be passed against him has absconded or left the local limits of court.

(ii) is about to abscond from jurisdiction of court and he is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in execution of any decree that may be passed against him.

The court may issue a warrant of arrest of defendant and bring him to court to show cause why he should not furnish security for his appearance.

Upon hearing the submissions of counsel and upon reading the affidavit I am satisfied that the plaintiff applicants are entitled to order which I hereby grant. However the defendant shall not be arrested if he pays to the officer with the warrant the sums of USD.152,319.17.

In the event the defendant is not traced, it is hereby ordered that his assets set out under paragraph 6 of application be attached. Orders are granted accordingly.

Costs in the cause.

DATED and DELIVERED at Nairobi this 29th day of September 2008.

JOYCE N. KHAMINWA

JUDGE