

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL CASE 381 OF 2008

HASSAN MUSTAFA..... PLAINTIFF

VERSUS

BERTI BERHANE HAGOS.....DEFENDANT

RULING

Application dated 30.10.2008 by Chamber summons under order IXB Rule 8, XXXVIII Rules 3 and 12 and Order 39 Rule 4.

This application dated 30.10.2008. The applicant submitted that no intention as envisaged under Order 38 Rule 1 has been proved and she is not disposing of her property indeed the vehicle (asset) which was to be arrested was on its normal transport business coming into Kenya when it was arrested.

The Police abstract showing a complaint filed in respect of the motor vehicle does not show that the vehicle was leaving the country. It was coming into Kenya. The Applicant has shown that she resides in Kenya and has premises on Plot No.209/13867 where she is a consumer of Electricity from Kenya Power & Lighting company.

Her children attend school in Kenya and were infact born in Kenya at Aga Khan Hospital in 1999 and 2001 respectively.

It is clear she is a resident of Kenya. She is a transporter of goods through Kenya to neighboring countries. On the other hand, the Plaintiff is a resident of Kampla outside jurisdiction of his court.

I have considered the arguments of both sides and requirement of the provision of Order 38 (1) Civil Procedure Code. I am satisfied that the Plaintiff has not proved that there are grounds to warrant Orders against the Defendant as to giving security for her appearance.

The necessary intention is not proved. On the other orders sought, the court must hear both parties before issuing orders and as there is no grounds shown the Application is dismissed with costs to the Defendant/Applicant.

It is so ordered.

DATED this 27th day of November, 2008.

JOYCE N. KHAMINWA

JUDGE