

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 374 of 1998

FIDELITY COMMERCIAL BANK LTD.....PLAINTIFF

VERSUS

TAJDIN HUSSEIN..... DEFENDANT

RULING

Chamber Summons dated 22.05.2007 seeks orders to lift and set aside warrants of arrest issued against the judgment debtor and that the debtors passport be released to him. The only prayer outstanding is for the release of his passport.

The application is supported by affidavit of the debtor sworn on 22.05.2007. The debtor swears that he solely relies on the goodwill for his daily survival of his children and that he suffers from chronic abdominal pain and that a Dr. Alaudin Shariff M.d. has recommended that he needs further specialized treatment abroad. Exhibit "THZ 1" is a certificate issued by that doctor.

The debtor states that his daughter in Canada will receive him and therefore he needs to travel there. He is a citizen of Kenya aged 63 years. He further says his passport was deposited in court by order of Court and he applies for its release to enable him to travel. He confirms that he will return immediately after treatment.

The application is opposed by judgment creditor who fears that if the passport is released the Applicant may not return since his children are abroad. The Respondent also believes that the health of the Applicant is not bad. There are two medical reports of two years ago and it is shown his health is not bad at all.

There is evidence that the Applicant offered to clear the debt by monthly installments of Kshs.20,000/= each, but that he has never paid a single installment. It is also stated that he never executed bond of Kshs.1 million as ordered. There is also evidence that a third party has been added to the suit after the compliance with relevant rules. Hon. Justice Azangalala entered judgment for the defendant against the third party for indemnity in favour of the debtor.

The Plaintiff's judgment against the Defendant has to be settled by the Defendant. It is for him to claim for indemnity from the third party. It is not enough to allege that a third party will pay the decree holder. Upon considering all the above, I am convinced that the decree holder would stand at risk of not recovering the decretal amount should the Respondent judgment debtor was to leave the country before settling this decree.

I find no reason either on medical grounds or otherwise to warrant enabling the Applicant to travel out of the country, the jurisdiction of this court.

The application is dismissed with costs to the Respondent.

Orders accordingly.

DATED this 3rd day of November 2008.

JOYCE N. KHAMINWA

JUDGE