

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL CASE 1098 OF 2002

ALFRED SAMBU KIBOI.....PLAINTIFF

VERSUS

ANNE MWOK-HANDA.....1ST DEFENDANT

HAKI TRADERS.....2ND DEFENDANT

RULING

The applicant by way of this Chamber Summons expressed to be brought under O.XXXIX Rule 2 2A of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks orders to stop the release of Shs.70,000/= deposited in court by the plaintiff and that the said Shs.70,000/= be released to the 1st defendant as per the order of Mbitio J made on 18th July 2002.

The application is premised on the ground that on 18th July 2002 Mbitio J found in favour of the 1st defendant that the plaintiff was owing the 1st defendant Shs.140,000/= and ordered that Shs.70,000/= deposited in court by the plaintiff was to forthwith be released to the 1st defendant and the plaintiff was also further ordered to pay the 1st defendant another Shs.70,000/= upon which his attached goods were to be released to him. The said order was never set aside or reviewed.

On the 31st July 2002, the same judge without any application, the file was placed before him for mention but proceeded to make another order that the said deposit of Shs.70,000/= be released to the plaintiff. This order was made while the earlier one made by the same judge was in force. Mrs. Nanjero counsel for the 1st defendant urged this court to issue an order stopping the released of the money to the plaintiff and order that the money be released to the 1st defendant. counsel has annexed extracted order for both the 18th July 2002 and 31st July 2002 and on perusal of both orders, it emerges that the second order made on 31st July 2002 to release the money to the plaintiff was made during a mention and without any application. It is irregular for the court to make a substantive order during a mention and without any application. I concur with counsel for the 1st defendant and allow the application in terms of prayer 3, 4 and 5 of the Chamber Summons dated 6th august 2005.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of February 2006.

J.L.A. OSIEMO

JUDGE