



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA**

**Civil Suit 143 of 1999**

**MATHIAS KINIALE SIFUNA.....PLAINTIFF**

**VS**

**EASTERN KITUI STORES & 2 OTHERS.....DEFENDANTS**

**RULING**

By an application dated 2<sup>nd</sup> December 2005 by way of Chamber Summons, pursuant to the Provisions of Section 3A of the Civil Procedure Act, and Order XX1 Rule 36 and 91 of the Civil procedure Rules, the applicant seeks orders that:

- (a) Service of this application be dispensed with in the first instance.
- (b) This court be pleased to make an order and summon the directors of the 1<sup>st</sup> defendant in person to be orally examined as whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what property or means of satisfying the decree.
- (c) That this court be pleased to make an order that the directors of the 1<sup>st</sup> defendant produce for examination its list of debtors, bank statements for the months of January 2005 to May, 2005, its audited accounts for the year 2003 to 2004 and a list of its movable and immovable assets for examination of the business and other registered related business.
- (d) That costs of this application be provided for.

The application is based on the grounds that:

- (1) The plaintiff obtained judgment against the defendants on the 18<sup>th</sup> day of June 2004, and the decree dated 8<sup>th</sup> September 2004 indicate that the defendants owe the Plaintiff Ksh.3,703,630/= costs inclusive an amount which is outstanding and continues to attract interest at Court rates.

The application is predicated upon the annexed affidavit of Andrew W. Kituyi, advocate sworn on 6<sup>th</sup> December 2005.

The application was served on the firm of Wekesa & Co. Advocates for the respondent as per the affidavit of service of Elias Wesonga sworn on 8<sup>th</sup> March 2006. At the hearing there was no representation from the said firm. On application, I allowed the applicant leave to proceed ex-parte.

The applicant submitted that on 18<sup>th</sup> June 2004, judgment was entered for the plaintiff against the defendant in the sum of Ksh.3,740,000/= plus costs and interest.

That the decree drawn on 8<sup>th</sup> September, 2004 indicate that the debt due and owing was at that point in time Ksh.3,703,630/= which was inclusive of costs and interest as per copy of the decree marked A. That since the entry of judgment the defendant has not paid the decretal amount.

It was the applicant's case that the first defendant has means to pay the debt but is refusing or ignoring to settle the same, hence this application.

I have scanned through the application and particularly annexures A and B. I have equally looked at the law on the point.

I take the view that the application is merited in the absence of evidence to controvert the applicant's evidence embodied in the affidavit in support. Accordingly, I grant the application in terms of prayer (b), (c) and (d).

The applicant be at liberty to take a date in the Registry for the examination of the directors.

Dated and Delivered at Bungoma this 16th day of March 2006.

N.R.O. OMBIJA

JUDGE

Mr Watanga for Kituyi for the Applicant/Plaintiff

Mr Kasamani for the Respondent/Defendant