



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**  
**Civil Case 7 of 2000**

**BRITANIA OILS LIMITED..... PLAINTIFF**

**VERSUS**

**RELIANCE HAULIERS LTD ..... DEFENDANT**

**RULING**

Before me is a Chamber Summons dated 8th April 2005, file by Messrs. Karira & Company Advocates on behalf of Britania Oils Limited, decree holders. The application is against a purported director of Reliance Hauliers Limited. It is said to have been brought under section 3A and 63 (e) of the Civil Procedure Act and XXI rule 36 of the Civil Procedure Act (Cap.21). It seeks for following orders

**1) Spent**

**2) That the court be pleased to order and summons the Director of the defendant company RM. Dilraj Singh Renu to attend court in person to be orally examined as to the debts that are owing to the judgment debtor and how it is intended for the debt to be paid.**

**3) That the court be pleased to order that the said Director Dilraj Singh**

**Renu produce before the court for examination, the following documents:**

**i) List of debtors.**

**ii) Bank Statements for January 2005 to April 2005.**

**iii) List of assets.**

**iv) List of movable and immovable property. v) Audited accounts for the years 2003 and 2004.**

**4) That costs of this application be provided for.**

The application has grounds on the face of the Chamber Summons and is supported by the affidavit of David Maina sworn on 7th April 2005.

The application is opposed and a replying affidavit sworn by Dilraj Singh Bhui on 25th June 2005 was filed.

At the hearing of the application, Mr. Karira for the applicant submitted that they had tried other means of execution but did not succeed. They therefore served the respondent in person. They were now asking the

respondent to avail himself in court with the documents and to be orally examined as to how the defendant company intends to pay the judgment debts in the case. He submitted that they were relying on a search certificate issued by the Registrar of Companies confirming that the respondent was a director of the defendant, which was annexed to the supporting affidavit.

He submitted that by virtue of Order XXI rule 36 (b) of the Civil Procedure Rules, the court had powers to summon a director to appear on a date to be appointed and in default a warrant of arrest to issue. He submitted further that under Order XXI of the Civil Procedure Rules, counsel for the judgment debtor would only show cause on behalf of the judgment debtor if the judgment debtor has indicated how he intended to pay. He submitted that in his replying affidavit the deponent denied that he was a director. He denied that he was the director that they were following. He asked the court to strike out the affidavit as the deponent of the affidavit was a stranger. In his view, that affidavit had also been sworn in utmost bad faith in that it deponed that the defendant is not a limited liability company but a business name. He stated that there was an application filed on 31st July 2000 by Messrs. Olago, Aluoch & Company Advocates who were acting for an objector called Reliance Limited. Therefore, his current replying affidavit was sworn in bad faith.

He further submitted that on 31st January 2004 Mr. Buluma who appeared for the defendant admitted that the company was incorporated. Therefore, in his views, the certificate of registration of a business name annexed to the supporting affidavit was meant to mislead the court. In his view, the respondent was actually the director of the company but wants to mislead the court that he was declared bankrupt. He submitted that counsel for the deponent of the affidavit had no audience to appear in court as the deponent was meant to appear in person.

Mr. Onyai, for the deponent opposed the application. He relied on the replying affidavit. He submitted that the documents clearly showed that there were two entities. One was Reliance Hauliers and another Reliance Hauliers Limited. In the plaint, it is Reliance Hauliers who are sued and not Reliance Hauliers Limited. There was no indication that the decree was against Reliance Hauliers and not Reliance Hauliers Limited. The Certificate of Costs was also against Reliance Hauliers. He referred to the certifying showing that Reliance Hauliers was registered as a business name. The two are different entities. The accounts provided in the proceedings were between Reliance Hauliers and Britannia Oils Limited and have nothing to do with Reliance Hauliers Limited.

He submitted that the Bankruptcy Cause was against Amit Singh who was the proprietor of Reliance Hauliers. There was therefore no legal basis for summons to his client. His client had never been an officer of Reliance Hauliers which was a business name. Secondly, he submitted that there was an issue as to whether his client was a director of Reliance Hauliers Limited. In his view, there was no evidence that his client was a director of Reliance Hauliers Limited. He submitted that the issue raised by his learned colleague on the warrant of arrest was premature. The court had to consider this application and come to its own conclusion.

I have considered the application, the replying affidavit as well as the submissions of both counsel. I will first of all state that any person who is summoned to appear in court, has a right to be represented by counsel, whether he himself is present in court or not. Therefore, the argument by Mr. Karira that the person summoned to court herein, should not be represented by counsel is fallacious and has to be dismissed with the contempt that it deserves.

This application was brought under Order XXI rule 36 of the Civil Procedure Rules, which provides among other things, that where a decree is for payment of money, the decree holder may apply to the court for an order that any officer of a corporation be orally examined as to whether any or whether the debts are owing to the judgement debtor, and whether the judgment debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment debtor or officer, and for the production of any books or documents. In this application the defendant is said to be Reliance Hauliers Limited. The person who is being requested to come to court for examination and production of documents is said to be Dilraj Singh Renu. It has been argued that the judgment debtor is Reliance Hauliers and not Reliance Hauliers Limited. It has also been argued in the

replying affidavit that the person who was served and has come to court is Dilraj Singh Bhui and not Dilraj Singh Renu.

It is therefore important to establish whether the judgment debtor is the subject company mentioned in the application and secondly, whether the person who was served is the same person who should have been served and whether he is a director of the company.

On the first issue as to whether the judgment debtor is Reliance Hauliers Limited, I observe that the plaint was filed against Reliance Hauliers. The defence was filed on behalf of Reliance Hauliers. Reply to the defence was filed by the defendant as Reliance Hauliers. A consent order for costs were in the name of Reliance Hauliers. Request for judgement was also against Reliance Hauliers. Judgement and decree were against Reliance Hauliers. Application for taxation of Bill of Costs was against Reliance Hauliers. Consent order for costs was against Reliance Hauliers. Application for execution of decree was against Reliance Hauliers and warrant of attachment dated 29th June 2000 was also against Reliance Hauliers. Proclamation, however, by Direct O. Services dated 4th July 2000 and signed by Geoffrey Kariuki was against Reliance Hauliers Limited. When items were attached an application was made by Reliance Engineering Works Limited through Messrs. Olago & Aluoch Company Advocates dated 6th July 2000, objecting to the attachment on the ground that the judgment debtor had no equitable interest in the case proclaimed and that the goods claimed belonged to the objector exclusively.

The certificate of search annexed to the supporting affidavit to the Chamber Summons is in respect of Reliance Hauliers Limited and was issued by the Assist Registrar of Companies on 18th July 2005. It listed the directors of the company as at 18th June 2005 as Harmeet Singh Bhui of Kisumu and Mrs. Khrinder Kaur of Kisumu, Dilraj Singh Renu of Kisumu and Randeep Singh Renu of Kisumu.

The person served with the notice to appear before the court stated in the replying affidavit that Reliance Hauliers were merely a business name and he attached a Certificate of Registration No.219053 showing that it was registered as such on 2nd February 1995. This was annexure "DSB2" of his replying affidavit.

Having considered this matter and having seen the search certificate for Reliance Hauliers Company Limited and the Certificate of Registration for the business name of Reliance Hauliers, I am of the view that the two were completely different entities. The plaint and all documents in the proceedings refer to Reliance Hauliers and not Reliance Hauliers Limited or even Reliance Hauliers Company Limited as given by the Assistant Registrar of Companies. The word "Limited" surfaces for the first time from Direct O. Services who were Auctioneers. Where they got the description of the firm seems to be surprising. It does not flow from any documents in the case file. In my view therefore, the two firms are different entities. One cannot take liability or responsibility of the other, unless there is a clear connection between the two, which will also transfer the said liabilities.

It was for the applicant to show the court on the balance of probabilities that Reliance Hauliers as a registered business name and Reliance Hauliers Limited as a registered company either mean one and the same thing, or the liability of one could be transferred to another. In this application, the defendant has always been Reliance Hauliers and not Reliance Hauliers Limited. The application herein is against Reliance Hauliers Limited. I find that the applicant has brought an application against a wrong party. On that ground, this application has to fail.

The second issue is whether the person who was served was a director of Reliance Hauliers Company Limited. He is described by the applicant as Dilraj Singh Renu. In his replying affidavit he says he is Dilraj Singh Bhui. In essence he is saying he was not correctly served, as he was not the intended Dilraj Singh Renu. The applicant did not file any further affidavit to explain away the contention of the person who was served. He was served by a process server. The process server did not give an explanation as to whether he knew Dilraj Singh Renu before. In that kind of scenario I am of the view that the respondent might or might not be Dilraj Singh Renu. In any event, there were several other directors of Reliance Hauliers Company Limited as indicated by the Assistant Registrar of Companies. Those other directors could also be served, if the applicant felt strongly about that. However, as I have already found that the judgment debtor is Reliance Hauliers and not Reliance Hauliers Limited, I do not think that it would have

made any difference even if the respondent was the actual director of Reliance Hauliers Limited.

On my part, I find that the applicant has also failed to show that the person who has been summoned to court is either Dilraj Singh Renu or a director of Reliance Hauliers Company Limited. The proper judgement debtor herein, in my view, is Reliance Hauliers which is a business name and as at the time of registration its proprietor was Harmeet Singh Bhui, who also appears to be a director of Reliance Hauliers Company Limited as indicated by the Assistant Registrar of Companies.

For the above reasons, this application fails and I dismiss the same. The applicant will pay the costs of Dilraj Singh Bhui, who was served with this application and appointed counsel to represent him.

**Dated and delivered at Eldoret this 8th day of November 2005.**

**George Dulu**

**Ag. Judge**

**In the Presence of**