

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIV CASE 6587 OF 91

GEORGE NEIL BAIRD & ANOTHER PLAINTIFF

VERSUS

FREDERICK JOSES KINYUA & ANOTHER DEFENDANT

RULING

I have considered the preliminary objection raised herein by Counsel for the Respondents. The same raises 3 points of law namely that

- 1) This court has no jurisdiction to entertain the Notice of Motion dated 28 th November 2003 as drawn and filed.
- 2) The application does not lie in law
- 3) The judgment sought to be enforced is not executable and the respondents cannot be called upon to show cause.

This application has been brought under Order 21 Rule 1 Sub rule (a) seeking firstly an order requiring the Defendant to show cause why execution of a decree passed against them over 10 years ago should not be executed against them.

Secondly such other orders as the court may deem fit, just and expedient to grant and for costs to be provided for. The procedure for application for execution is provided for in Order XXI Rule 6 which requires that a person seeking to execute a decree should apply to the court and such application shall be made in accordance with Form No. 5 of Appendix D of the Civil Procedure Rules. Order XXI Rule 18 (1) (a) is to be invoked where such application is made, inter alia, in respect of a decree which is over one year old. The Notice to show cause why execution should not issue is issued by the court also in the form prescribed under the Rules, specifically Form No. 6 of Appendix D. Under Order XLVIII Rule 5 (b) (x) the proper person to deal with application of this nature is the Registrar of the High Court. I allow the preliminary objection and hold that this application is improperly before me and is in fact an abuse of the process of the court. In the circumstances it is not necessary for me to deal with the third objection. The application is hereby dismissed with costs to the Respondents.

M.G. Mugo

Ag. Judge

20th February 2004