



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HCCC.NO. 170 OF 2002

ASHOK KUMAR PUNJA SHAH ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

LIQUIDATION AGENT

(RELIANCE bank Ltd) & 6 OTHERS ::::::::::::::::::::::::::::::::::::::: DEFENDANT

R U L I N G

This is an application by way of Chamber Summons dated 15th August 2003. It seeks for orders that there be a stay of execution of the decree given on 31st January 2003 and issued on 22nd May 2003 pending hearing of the application inter-partes. It also seeks that the ex-parte Judgement entered on 31st January 2003 against 2nd and 3rd defendants be set aside. The application was brought under Rule 3(1) of the High Court Practice vacation Rules, Order V Rules 2 and 7, Order 1XA Rule 10 and Order XXI Rule 22 Civil Procedure Rules and section of the Civil Procedure Act. It is supported by an affidavit sworn by Panachand Jivraj Shah on 16th August 2003 and an affidavit sworn by Dipak Panachand Shah also dated 16th August 2003.

Counsel for the applicants submitted before me that the 2nd and 3rd defendants had not been served with summons to enter appearance. If service was by registered post then it was not valid as it contravened the provisions of Order V Civil Procedure Rules, which allows service by registered post only to corporations. H submitted that the postal addresses used were wrong and that it was not possible to serve one summons by post and another one personally in the same suit. He submitted that the building at which service was alleged to have been effected i.e. Ravishi building was closed at that time. He asked that the ex-parte judgment be set aside and 2nd and 3rd defendants be allowed to enter appearance and file their defences. He also asked for costs. Mr. Kuloba for 5th and 7th defendants asked that the judgment be set aside against all defendants.

Counsel for the respondent Mr. Obutu opposed the application. He submitted that service was properly effected and affidavits of service sworn and filed. He submitted that only one original summons was issued in respect of the seven defendants and duplicates were made for service. He stated that no one has challenged the judgement entered against 4th to 7th defendants. He submitted that if the judgment is set aside, it should be conditional.

I have considered the documents filed in the application and the submissions of the counsel for the parties. I have a doubt in my mind as to whether service was actually effected on the 2nd and 3rd defendants. In the interests of justice therefore I allow the application, set aside the judgment entered against them and allow them to enter appearance and to file defence. The time limit for them to enter appearance and file defence is as provided for in the Civil Procedure Act and Rules from today.

I grant cost of this application to the applicants.

Dated and delivered at Eldoret this 24th Day of March 2004.

George Dulu

Judge

