



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2766 OF 1995

CHEPKORIR SEGOPLAINTIFF

VERSUS

JULIUS KIPRONO BII & ANRDEFENDANTS

R U L I N G

The application by the JD/Applicants dated 9/11/02 seeks to have the Deputy Registrar order of 19.9.02 set aside or reviewed. The order made on 19.9.02 is that the 1st JD has to pay Kshs.100,000/= to DH by 17.10.02 failing which he would be committed to civil jail and the JD now argues that the order was a mistake because under S.42(1)(b)(iii) as held with section 42(2) CPA he cannot be committed to civil jail again having served a jail term there before in the same decree and was released on 23.8.01 on request by DH.

The application is opposed on grounds that the 1st JD never served the full 6 months jail because a consent was reached between the 1st JD and DH and it was filed in court on 23.8.01 and that it had a default clause and since the 1st JD defaulted that is why the DH applied for another NTSC and counsel submits that S 42(2) CPA does not apply here.

It is not in dispute that the 1st JD had been committed to civil jail and was released vide consent order filed by both 1st JD & DH on 23.8.01. Under S 42 1(b) a JD who is imprisoned can be released for defence before the 6 months are over if the sum mentioned in the warrant is paid to the office in charge of the person or if the decree is fully satisfied and the court so orders or, if the request of the 1st JD was only released from detentive when he signed a consent and bound myself to pay the decretal sum by a certain date. There is a default clause in the consent that execution would issue if he failed to pay. He failed to pay as agreed in the consent and that is why they came back to court on 19.9.02 following order this court made orders of payment. Although the DH consented to the 1st JD release from the prison it was on condition. He had not satisfied the decree, DH had not failed to pay the subsistence S 42(2))can not apply S 42(1) because 1st JD has released because of the consent he signed which led conditions that he did not fulfill. The DH on his own volition had not just decided to have the 1st JD released from prison. I do find that there is no some of the face of the record to justify and review of the orders of 9.9.02 now is that good reason to warrant or setting aside of the same. It stands this application is dismissed with costs to the DH/Respondent. I note that this application should have been only in respect of 1st JD not 2nd who has been arrested.

R. WENDOH

SENIOR DEPUTY REGISTRAR

COURT:

Ruling delivered

Mr. Muriuki for Mr. Onyango for applicant

C.K. NJAI

PRINCIPAL DEPUTY REGISTRAR

5.2.2003

Coram: R. Kuloba, J

Court clerk – Ann

Mr. Onyango for applicant

ORDER:

Leave to act for the first defendant is granted.

R. KULOBA

JUDGE

5.2.2003