



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

**AT MOMBASA**

**CIVIL CASE NO. 265 OF 2002**

**MOMBASA MAIZE MILLERS LIMITED ..... PLAINTIFF**

**V E R S U S**

**GABRIEL NDUNGU T/A GATHIMA STORE ..... DEFENDANT**

**RULING**

This application is brought under Order 38 Rule 5 (1) of the Civil Procedure Rules. It is seeking only one main prayer and that is a prayer that the Defendant do place at the disposal of the Court, the three houses without land and the partially constructed building on Plot No. 281 Section I MN whose estimate value is Kshs. 1,550,000/- and court order conditional attachment of the same till further orders of this court.

The plaintiff is claiming Kshs. 2,039,200/- interest on the same amount at court rates from the date of filing the same Plaint until payment in full, costs and incidental to the suit. There is an Affidavit in support of the same Application sworn by the Manager of the Plaintiff Company. That Affidavit explains how the debt came about and there are annexures on the Affidavit. That Affidavit also states that the Defendant is about to dispose of all the properties he owns and if he is allowed to do so it will delay or defeat any decree that may be passed against him. I have also seen the Affidavit of Service sworn by the Court Process Server and what the same Process Server alleges to have seen when he went to serve the process. All these allegations have not been disputed by the Defendant who was duly served. He did not appear before the court at the time the matter was heard.

I do realise that courts need to be cautious in ordering attachment before hearing the entire case. However, this is a case where the Plaintiff may in the end gain no more than a pyrrhic victory (should it win the case in the end) if the attachment is not allowed before judgment for it appears to me from the evidence before me that the Defendant may very well be disposing of his property as is being alleged and not disputed.

I do grant the application as prayed. The properties mentioned in Prayer 2 are to be placed at the disposal of the court till this matter is heard and determined or till further orders.

Neither the plaintiff nor the Defendant is to dispose of any and / or all of the same properties till this case is heard and determined or till further Orders of the court.

Orders accordingly.

Dated at Mombasa this 8th day of July, 2002.

**J. W. ONYANGO OTIENO**

***JUDGE***