



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CAUSE 273 OF 2010

BELGRAVIA SERVICES LIMITED.....PLAINTIFF

VERSUS

SIMON NDEGE.....1ST DEFENDANT

KIGEN KANDIE.....2ND DEFENDANT

KIPTUI KANDI.....3RD DEFENDANT

KIPRUTO KANDIE.....4TH DEFENDANT

RULING

1. On 13th October 2010 Judgment was entered hereof by consent in favour of **Belgravia Services Limited**, the Plaintiff, against **Simon Ndege**, the 1st Defendant and **Kipruto Kandie**, the 4th Defendant. That judgment was for Kshs. 13,500 with interest and costs of Kshs. 492,380 were awarded by consent to the Plaintiff.

2. The Notice of Motion application dated 10th July 2019 is filed by the 1st and 4th Defendants. They seek the following prayer:

“That this Honourable Court be pleased to lift, cancel, set-aside and discharge the warrants of arrest issued on 7th June, 2019.”

ANALYSIS

3. Looking through the file I was able to trace and see that the Deputy Registrar of this Court did issue on 7th June 2019 warrants of arrest of the 1st and 4th Defendants. I have also seen the application by the Plaintiff for those warrants of arrest to be issued.

4. The application before me is based on the ground that the Plaintiff and the Court erred to have issued warrants of arrest before a Notice to Show Cause was issued and served on the 1st and 4th Defendant.

5. The Plaintiff has opposed the application on various grounds which, inter alia, are that the application is an abuse of the Court process; that the application is intended to deny the Plaintiff fruits of its judgment; the application is intended to delay the realization of the judgment; and that despite several demands the Defendant had denied the Plaintiff the decretal sum.

6. In all the grounds of opposition raised by the Plaintiff none really responded to the Defendants’ plea before Court that warrants of arrest should not have been issued without Notice to Show Cause having been served upon the Defendants. The Plaintiff’s reliance on Order 22 Rule 18(2) of the Civil Procedure Rules does not fit into the circumstance of this case. **Order 22 Rule 18** requires a Notice to Show Cause to issue in the following circumstances set out in **Order 22 Rule 18(1)**:

“(1) Where an application for execution is made—

(a) more than one year after the date of the decree;

(b) against the legal representative of a party to the decree; or

(c) for attachment of salary or allowance of any person under rule 43,”

7. The Plaintiff sought to rely on the provisions of Order 22 rule 18(2) which provides:

“(2) Nothing in Subrule (1) shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.”

8. A careful look at Order 22 Rule 18(2) reveals that the Court has to record reasons why the provisions of Order 22 Rule 18(1) should be overlooked. For the Court to record such reasons the party applying must set out those reasons. In this case the Plaintiff did not set out any reasons at all why a Notice to Show Cause should not issue to the Defendant. There is a good reason why Order 22 Rule 18(1) provides that a Notice to Show Cause be issued. The reason in my view is to give the party against whom the execution is sought an opportunity show cause why that execution should not proceed when there has been a lapse of more than one year from the date of the decree; where the execution is sought against personal representatives of a deceased; and where execution is sought to attach a salary. In this case the decree which the Plaintiff sought to execute by issuance of warrants of arrest was more than one year. The Defendants as provided under Order 22 Rule 18 (1) were entitled to show cause why warrants of arrest should not issue against them.

9. The application of the Defendants is merited. The Defendants having succeeded they are entitled to the costs thereof.

CONCLUSION

10. The order of the Court are as follows:

- a. The order of warrants of arrest issued by this Court on 7th June 2019 are hereby cancelled and set aside.**
- b. The costs of Notice of Motion dated 10th July 2019 are awarded to the 1st and 4th Defendants to be paid by the Plaintiff.**

DATED, SIGNED and DELIVERED at NAIROBI this 4TH day of OCTOBER, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE PLAINTIFF

.....FOR THE 1ST DEFENDANT

.....FOR THE 2ND DEFENDANT

.....FOR THE 3RD DEFENDANT

.....FOR THE 4TH DEFENDANT