



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 559 OF 2006

JAZIRA AGENCIES NAIROBI LIMITED.....PLAINTIFF

VERSUS

HASSAN AHMED ZUBEDI.....DEFENDANT

RULING

1. The subject matter of this ruling is the motion dated 13.11.2015

taken out by Hassan Ahmed Zubedi, the Defendant/Applicant herein. In the aforesaid motion, the Applicant seeks for the following orders inter alia:

1. ***THAT this application be certified urgent and heard ex-parte in view of its urgent nature, service thereof be dispensed with and prayer 2 be granted ex-parte in the first instance.***
2. ***THAT there be a stay of execution of the warrant of arrest and all consequential orders made on 10th November 2015 pending the hearing and determination of this application.***
3. ***THAT the notice to show cause dated 5th October 2015 be set aside.***
4. ***THAT the warrant of arrest and all consequential orders issued on 10th November 2015 be set aside.***
5. ***THAT the costs of this application be borne by the Respondent.***

2. The motion is supported by the affidavit sworn by the Applicant. When served, Jazira Agencies (Nairobi) Ltd, the Plaintiff/ Respondent filed grounds of opposition and a replying affidavit sworn by Abdalla Ali Taib to oppose the same. Learned counsel appearing in this matter presented oral submissions.

3. I have considered the material placed before this court and the oral submissions of Mr. Kipng'eno, learned advocate for the Defendant/Applicant who argued that the exparte warrant of arrest and the consequential orders made on 10.11.2015 are irregular, null and void as the notice to show cause was not listed on the cause list of 10th November 2015. It is also argued that the court had no jurisdiction to issue the orders under Order 22 rule 19 of the Civil Procedure Rules and hence the warrants of arrest and consequential orders are null and void ab initio. The Applicant further complained that the issuance of the aforesaid warrant of arrest and execution process herein without affording the Applicant an opportunity to be heard is unfair, oppressive and subversion of the rule of law and natural justice.

4. The Plaintiff/Respondent is of the view that the motion is frivolous since the warrants of arrest was lawfully granted. The Plaintiff pointed out that contrary to the assertion made by the Defendant, the notice to show cause why the Defendant should not be committed to civil jail was

listed and the cause list listing this suit affixed on the court's notice board on 10.11.2015. It is also argued that the application is meant to circumvent and defeat the cause of justice and waste this court's time.

5. I have carefully perused the court record and it is apparent that on 24th September 2015, the Plaintiff's advocate together with the Defendant's advocate appeared before the court and the court thereafter listed the notice to show cause for 10th November 2015. The notice required the Defendant to show cause which he should not be committed to civil jail for failing to settle the decretal sum of ksh.4,097,500/=. The record shows that the court further ordered for service to be effected by substituted service by advertisement through the Daily Nation newspaper. It is apparent that the advertisement was done thus making the Defendant aware of the existence of the notice to show cause. I am satisfied that the Applicant was made aware of the existence of the notice to show cause and he chose to ignore the summons and completely stayed away from court.
6. The Plaintiff's advocate in the circumstances rightly applied for the issuance of the warrants of arrest. I am further convinced that the warrants of arrest were properly issued hence the Defendant cannot be heard to complain yet he was made aware all along. I am persuaded by the submissions of Mr. Ochieng, the Plaintiff's learned advocate that the Defendant filed this application with the sole purpose of delaying the execution of the court orders and decree.
7. The Defendant has argued that the court had no power to issue the warrant of arrest under Order 22 rule 19 of the Civil Procedure Rules. I have read the aforesaid provisions and it is clear to me that the court actually has jurisdiction to issue the orders hence the Defendant's argument cannot stand. All the requirements necessary for the court to issue the orders were met.
8. In the end, I find no merit in the motion. It is dismissed with costs to the Plaintiff/Respondent.

Dated, Signed and delivered in open court this 8th day of April, 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant