

REPUBLIC OF KENYA

High Court at Mombasa

Civil Appeal 5 of 2012

CHARLES KARIITHI ARITHO.....APPELLANT

VERSUS

CHRISTINA ATUMWA EMENYI.....RESPONDENT

RULING

By way of this Chamber Summons dated 30th October, 2012 brought under certificate of urgency, the applicant makes the following prayers:

“2. THAT this Honourable Court be pleased to set aside the order of Honourable B. Koech Children’s Magistrate made on 10th October, 2012 (the order issuing a warrant of arrest) pending the hearing and determination of this appeal.

4. THAT the appellant be at liberty to continue paying Kshs. 14,071/= per month as ordered by court on the 15th October, 2012 together with half of medical and educational expenses of the issues of the marriage if and when arise pending the hearing and determination of the appeal.”

The respondent **CHRISTINA ATUMWA EMENYI** who acted in person opposed the application by way of a Replying Affidavit filed in court on 15th November, 2012. **MR. ADHOCH** appeared for the applicant whilst the respondent was in person.

The genesis of this application is the orders for warrant of arrest of the applicant made by **Hon. B. Koech** in Children’s Court Case No. 208/2010. From the annexed copy of proceedings subsequent to a notice to show cause issued by the Children’s Court, the matter was set down for hearing on 10th October, 2012. On that date neither the applicant nor his lawyer was in court. As such the learned trial magistrate ordered the arrest of the applicant. From the annexed copy of the cause list before the Children’s Court this matter was not listed for hearing.

I have looked at the hand written proceedings before Hon. Koech and note that the date for mention was cancelled and the dated 10th October, 2012 inserted by a different pen. This coupled with the fact that the matter did not appear in the cause list of 10th October, 2012 could have led to confusion being the reason why applicant did not appear on that day. In any event in her oral submissions before me the respondent stated that she had no objection to the lifting of the warrant of arrest. As such, I do allow prayer 2 of the present application.

Regarding the maintenance payments the trial court made specific orders for payment of Kshs. 14,071/= **plus** half of school fees and payment of medical costs by the applicant. The allegations that these orders were not adhered to led to notice to show cause which was to be heard in the Children’s Court.

Nevertheless, the respondent seeks the attachment of $\frac{1}{3}$ of the applicant’s salary. On his part Mr. Adhoch insists that his client is committed to make payments as directed by Hon. Koech. I note that Hon. Koech was in the process of dealing with the notice to show cause before the applicant moved to the High Court. The present application before me does not address the warrants of attachment of salary at all. This court is reluctant to give orders on this until the matter has been conclusively determined by Hon. Koech who had already summoned an officer from Department of Defence pursuant to the order of attachment. As such I feel that prayer (4) of the application ought to be referred back to the trial court for

determination.

It is so ordered.

Dated and delivered in Mombasa this 27th day of February, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Adhoch for Applicant

Respondent in person

Court Clerk Mutisya