



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL AND LAND CASE NO. 400 OF 2010
EASEMOVE LOGISTICS LIMITED PLAINTIFF

VERSUS

SOIN LIMITED

CITY COUNCIL OF NAIROBI DEFENDANTS

RULING

The first Defendant filed the notice of motion dated 31st March, 2011, seeking for orders that the first Defendant do provide security for costs in the sum of KShs.330,167/= or any other sum that the court may deem just. In support of this application, it was submitted that the Plaintiff is a limited liability company. It's permanent address or assets are not known to the first Defendant and in the event that the first Defendant may be successful in the suit, it may prove futile to execute for costs against the Plaintiff for recovery of any costs that may be awarded to the first Defendant.

The Plaintiff's claim in this suit is for an order of injunction, and general damages. The costs that are likely to ensue to the 1st Defendant are estimated at KShs.330,167/=. This application is further supported by the matters deposed to in the supporting affidavit sworn by one *Kipngeno Arap Ngeny* on 31st March, 2011, a director of the first Defendant. The first Defendant contends that the Directors, the physical location or the bank statements of the plaintiff are unknown, so are the Plaintiff's moveables or non-moveable assets. Furthermore, the first Defendant has a good defence and in the event that it succeeds, it will not be possible for the first Defendant to recover the costs.

On the part of the Plaintiff, ***Dr Khaminwa***, learned counsel for the Plaintiff, relied on grounds of objection and cited the authority in the case of ***MESSINA & ANOTHER VS STALLION INSURANCE CO LTD EALR [2005] 1 EA (LAK)***, where the following principle was advanced:

“The principle of poverty does not apply to a limited company while it rarely requires an individual plaintiff to give security for costs on the grounds of insolvency or poverty, the position is correctly reversed in the case of a company under the Companies Act. The court, however still retains its complete discretion on whether to order security for costs, which may be exercised on pragmatic principles.”

The Plaintiff in this case is a limited liability company who are exempted from the rules of poverty that apply to individual litigants. What is the pragmatic principle that is discernible from this application that would entitle the first Defendant to an order for the security for costs?

It was argued that the defence by the first Defendant dislodges the Plaintiff's case that is why the security for costs should be provided for.

I am not the trial court; therefore, it would be premature for me to decide on whether the Plaintiffs case raises a reasonable cause of action or not. The first Defendant is merely anticipating, that the Plaintiff's

suit will be dismissed. Looking at the Plaintiff's claim, I am not able to say with certainty that it is a mere sham.

For the aforesaid reasons, I dismiss the notice of motion dated 31st march, 2011. Costs shall be in the case.

Ruling read and signed this 17th day of February, 2012.

MARTHA KOOME
JUDGE OF APPEAL

Note:

This application was heard and concluded on 14th December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.