



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CIVIL APPEAL NO. 100 OF 2010**

**PAUL OLUOCH OMINDE ..... APPELLANT**

**VERSUS**

**KENYA POWER & LIGHTING COMPANY ..... RESPONDENT**

**RULING**

Order 42 Rule 14(i) of the Civil Procedure Rules provides that;-

***“At any time after the memorandum of appeal has been served the court in its discretion may order the appellant to give security for the whole or any part of the costs of such appeal.”***

This application is premised on the foregoing provision. The applicant seeks an order that security in the sum of Kshs.60,000/- be furnished by the respondent/appellant and in default the appeal be dismissed with costs. The applicant is the respondent in this appeal filed on the 21<sup>st</sup> May 2010 by the respondent/appellant.

The main ground for the application is that there is real likelihood that the respondent will be unable to meet the applicant’s costs should the applicant succeed in the appeal.

It is the applicant’s contention that the respondent has no known source of income. Therefore, in the interest of justice the orders sought ought to be granted. The application is opposed and although the respondent has not filed a replying affidavit, he filed grounds of opposition on the 30<sup>th</sup> May 2011.

Having considered the application in the light of the submissions made by the learned counsels for the applicant and the respondent, this court is of the view that the applicant has not provided satisfactory reasons for discretion to be exercised in its favour. The apprehension by the applicant that since the respondent left his employment as a casual employee with the applicant, he may be unable to raise the costs incurred by the applicant in the event that the appeal is successfully defended, is not based on any solid grounds but conjecture.

In the end result, the application is devoid of merit. It is and must be dismissed. Costs be in the cause.

**J.R. KARANJA**  
**JUDGE**

**(Read and signed this 9<sup>th</sup> day of June 2011)**

