



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL APPEAL NO. 140 OF 2011

**VITALIS OKERE (SUING AS NEXT FRIEND OF DOREEN PUSHPA
OKERE).....APPELLANT/RESPONDENT**

VERSUS

**AKAMBA BUS SERVICES
LTD.....RESPONDENT/APPLICANT
SOFITRA LTD.....RESPONDENT/
RESPONDENT**

(Being an appeal from the Ruling and Decree of the Chief Magistrate's Court at Milimani Commercial Courts Nairobi CMCC No. 9983 of 2002 delivered on the 25th February 2011 by the Hon. Mr A.K. Ndungu- Senior Principal Magistrate)

RULING

Security of Costs

Application Notice of Motion, 9th June 2011

I. BACKGROUND

1. The appellant/original plaintiff and his daughter (next of friend) had been involved in a road traffic and sustained serious injuries. They sued the first and second respondents for compensation.
2. The suit in the subordinate court was dismissed on 17th June 2009 for want of prosecution. An application dated 24th August 2010 to that subordinate court seeking orders to reinstate the suit for hearing was duly dismissed.
3. The appellant appealed to this High Court on 23rd March 2011. The respondent No. 1 filed application notice of motion 9th June 2011 seeking security of costs.

II APPLICATION NOTICE OF MOTION 9TH JUNE 2011

4. The applicant/respondent number one brought this application under Order 42 r 14 Civil Procedure Rules seeking this court's orders that the appellant produce security of costs of the appeal at an amount of Ksh. 50,000/=.

5. The second respondent supported the application.

6. In reply, the appellant stated that the amount of Ksh. 50,000/= was excessive, if this may be reduced.

III FINDINGS

7. The application herein is allowed on condition that there be security of costs issued. This sum be and is hereby reduced to the sum of Ksh. 10,000/=

8. An appellant has a right to be heard but as these courts have often said, the amount of security should not be so large as to shut out a person from accessing the courts.

9. There will be costs to the applicants, one and two respondents.

DATED THIS 30TH DAY OF SEPTEMBER 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

Advocates :

i) Z. J. Mohammed instructed by M/s Archer & Wilcox & Co Advocates for the Appellant

ii) A.M. Simiyui instructed by M/s Musyoka Wambua & Co Advocates for the 2nd Respondent

iii) F S Macharia instructed by the firm of Mungai Kalande & Co Advocates for the 1st respondent