



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 362 of 2008

ANTHONY CHINEDU EFEBIGBODEFENDANT

VERSUS

KENNETH NGANGA MUNGAI..... DEFENDANT

RULING

The defendants herein have made an application dated 2nd June 2009 under Section 3 A of the Civil Procedure Act and Order XXV Rules 1 & 6 of the Civil Procedure Rules. They seek for security of cost in the tune of Ksh 300,000/=.

The application has been opposed by the plaintiff through a replying affidavit dated 5th October 2009.

The defendants contend that they have reason to believe that the plaintiff will be unable to pay their costs in the event they defend the suit successfully. They contend further that the Plaintiff is embroiled in a property tussle and is not a Kenyan Citizen. Further that on the 19th of June 2007 the department of immigration issued deportation orders against the plaintiff although currently the said order has been stayed by the High Court and that in the event the stay order is lifted the plaintiff will be forced to leave the country.

The plaintiff in objecting to the application stated that he resides in Nairobi and has a permanent address. Further he has invested heavily in Kenya and has no reason to leave the country. On the deportation order he states that the case in court against the deportation has a high chance of success.

Order XXV Rule 1 has used the word “may” giving the court wide discretion whether or not to order for security of costs. The court has to use this wide discretion reasonably and Judiciously taking into account all circumstances surrounding a case, including whether the application is being used oppressively see **Sir Lindsay Parkinson & Co. Ltd vs. Triplan Ltd** (1973) 22 L. R. 632 the Judgment of Lord Denning L.R. at 644 Locally in **Gulf Engineering (E.A) Ltd vs. Amrik Singh Kalsi** (1976) K.L.R. at 277 – Todd J held –

“That section 110 of the Companies Act gave the court a wide discretion whether or not to order security for costs in any case, and, the court being satisfied that the Plaintiff’s claim was bona fide and had a reasonable prospect of success, it would not order the company to provide security for costs even though it would be unlikely to be able to afford the first defendant’s costs should he be successful.”

Having looked at the pleadings and without looking into a merit of the case at this stage it appears to me that the plaintiff has a bona fide case with chances of success. The reasons given by the defendants that the plaintiff is embroiled in a tussle and is not a citizen in my view are not a good reason for court to order for security. Doing so will be suggesting that one without assets and a resident who is not a Kenyan should be shut out of seeking justice in court of law. Having stated the above I find that the reasons given are not sufficient and that the application is prejudicial to the Plaintiff. I accordingly decline to grant the orders and I dismiss the same with costs.

Dated and delivered at Nairobi this 17th day of December, 2009.

ALI-ARONI

JUDGE

Ruling read in the presence of

.....For the Applicant

.....For the Respondent