

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1321 of 2001

JAMES MUCHENE NGEIPLAINTIFF

V E R S U S

1. STEPHEN VILJOEN

2. IVOR MATTHEE

3. BOC KENYA LIMITEDDEFENDANTS

R U L I N G

The Defendants have sought, by chamber summons dated 24th April, 2006, an order that the Plaintiff do deposit KShs. 3,000,000/00 as security for costs. The application is brought under Order XXV, rule 1 of the Civil Procedure Rules. The grounds for the application appearing on the face thereof are:-

1. That the suit relates to a large claim of money (KShs. 93,464,620/00) and the Defendants will therefore incur heavy costs in defending the suit.
2. That the Defendants are apprehensive that the Plaintiff might not have the ways or means of paying the Defendant's costs of the suit in the event that the suit is unsuccessful.

There is a supporting affidavit sworn by one JOSEPHINE N. ONGEGU, the Company Secretary of the 3rd Defendant. There is a supplementary affidavit sworn by the same company secretary of the 3rd Defendant in response to the replying affidavit.

The Plaintiff has opposed the application as set out in his replying affidavit sworn on 26th and filed on 27th September, 2006. The relevant sum total of that affidavit is that the Plaintiff is a man of means and will be able to meet the 2nd Defendant's costs should his suit fail.

I have considered the submissions of the learned counsels appearing. No authorities were cited. I do not understand the Defendants' case in this application to be that the Plaintiff's suit is frivolous, vexatious or an abuse of the process of the court; otherwise they would have applied for it to be struck out. In fact, in paragraph 5 of the supporting affidavit it is stated that the suit is complex and sensitive. The only reason given for the apprehension that the Plaintiff may not pay the Defendant's costs of the suit should the occasion arise is that he is currently not employed. That is not a sufficient reason.

I am satisfied from the replying affidavit that the Plaintiff, a highly qualified professional, is a man of substantial means and should be able to pay the Defendants' costs of this suit should that occasion arise. He has tabulated in the replying affidavit no fewer than seven (7) landed properties that he owns outright or in which he owns substantial shares, and also a motor vehicle, all to the total value of KShs. 41 million. He is a Kenyan residing in this country and there is no allegation that he intends to leave the jurisdiction of this court. Even if the Plaintiff did not demonstrate any means, that alone, in my view, would not be a sufficient reason to deny him the right to prosecute his suit without the burden of an order for security for costs.

I am not persuaded that there is any merit in this application. It is hereby dismissed with costs to the Plaintiff. Orders accordingly.

DATED AT NAIROBI THIS 14TH DAY OF MAY, 2008

H. P. G. WAWERU

J U D G E

DELIVERED AT NAIROBI THIS 16TH DAY OF MAY, 2008