



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

**Civil Suit 1367 of 2003**

**EMILY MUTHONI .....PLAINTIFF**

**VERSUS**

**GULF AIR CO. LTD.....DEFENDANT**

**RULING**

1. Consequent upon the plaintiff's application dated 2/03/2004 brought under Order 38 of the Civil Procedure Rules seeking *inter alia*, an order requiring the Defendant, its servants and/or agents to deposit security for costs from a reputable Financial Institution and place the same at the disposal of this Honourable Court or as the court deems fit, for the reason that the Defendant was relocating back its business to the Middle East by the end of March 2004 where the parent company was located, the court made an order on the 5/3/2004 requiring the applicant in the instant application to deposit with a reputable Financial Institution the sum of Kenya Shillings Five Million (Kshs.5,000,000.00) which amount was to be at the disposal of this Honourable Court until the suit was heard and determined.

2. Pursuant to the said order of 5/03/2004, the Defendant/Applicant deposited a Security Bond with Standard Chartered Bank Kenya Limited Kenyatta Avenue Branch, in the sum of Kenya Shilling Five Million (Kshs.5,000,000.00) which amount/security Bond was to stand until this suit was heard and determined. According to the wording of the Bond, the same to "*stand until the Decree of this Honourable Court be confirmed, reversed or varied by the Appellate court.*"

3. By its application dated 24/10/2005 the defendant/applicant prays that the said bond be released to the Defendant/Applicant for the reasons that:?

(a) *The Security Bond was to be in place until this Honourable Court delivers Judgment on the Plaintiff/Respondent's claim;*

(b) *The judgment in this case was delivered by the Honourable Justice J.L.A. Osiemo on the 21<sup>st</sup> June 2005 when the Plaintiff's claim was dismissed with costs to the Defendant/Applicant;*

(c) *There is no reason at all why the Security Bond should not be released back to the Defendant/Applicant.*

(d) *It is in the interest of justice and fairness that the said Security Bond be released forthwith.*

4. The application is supported by the sworn affidavit of Mohamed Munir Chaudhri dated 24/10/2005. Mr. Chaudhri reiterates the averments in the grounds on the face of the application and says that since judgment in the case was delivered on 21/06/2005 dismissing the Plaintiff/Respondent's claim with costs

against the defendant/applicant, the Security Bond should be released unconditionally to the Defendant/Applicant as the same no longer serves any purpose.

5. The application was fixed for hearing by counsel of the parties on the 6/03/2008, but on the said date, the parties were absent and the application was thus stood over generally. The applicant counsel appeared on 2/04/08 although it is not quite clear how and when this hearing date was taken. That notwithstanding the court allowed the application to proceed. The main reason for this decision was that since the application was first served upon the Respondent's counsel way back on the 28/10/2005, and even after being served with the hearing notice a second time on the 29/06/2007, the respondents have not filed any Replying pleadings to the Defendant's/Applicant's application.

6. After carefully considering the application and the submissions made by counsel for the Defendant/Applicant in the absence of both the Plaintiff/Respondent and her counsel, I am persuaded that there is no reason why the application cannot be allowed. The Plaintiff/Respondent has not controverted the averments as to the facts growing rise to this application.

7. In the result, the only option left to me is to allow the application dated 24/10/2005 and to order that:?

*(a) The Security Bond dated 18/03/2004 in the sum of Kenya Shillings Five Million (Kshs.5,000,000.00) issued by Standard Chartered Bank Kenya Limited, Kenyatta Avenue Branch in favour of this Honourable Court in respect of this case as per Court Order of 5/03/2004 be and is hereby released to the Defendant/Applicant.*

*(b) Costs of this application shall be in the cause.*

Orders accordingly.

Dated and delivered at Nairobi this 5<sup>th</sup> day of May 2008.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:?