



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL  
COURTS)**

**Civil Case 267 of 2005**

**ABDI ALI NUR .....PLAINTIFF**

**VERSUS**

**TRANSAMI (KENYA) LTD.**

**KOBIL PETROLEUM LIMITED .....DEFENDANTS**

**R U L I N G**

On 20.5.2005 the plaintiff instituted this suit against the defendants for the recovery of a sum of USD248,389.32 together with interest thereon and costs of the suit being the sum due and payable by the defendant to the plaintiff in respect of agreed charges for carriage and demurrage charges for 769 days at USD 300 per day. It is pleaded at paragraph 17 of the plaint that the plaintiff previously filed HCCC No.657 of 2003 against the 1<sup>st</sup> defendant and to which the 2<sup>nd</sup> defendant was enjoined as a third party which suit was struck out for want of a competent verifying affidavit on 12.5.2005.

On 28.6.2005, the 1<sup>st</sup> defendant delivered its defence in which it pleaded in paragraph 20, that the plaintiff instituted a suit on the same matter being HCCC No.1351 of 1999 in which his company A.A. Nur Transporters Limited was the plaintiff. The said suit was struck out on 15.3.2002 and the plaintiff was ordered to pay the defendant's and the third party's costs which costs (for the defendant) were taxed in the sum of Kshs.408,694.50. The 1<sup>st</sup> defendant further averred that the said costs had not been paid and it would apply for security for costs of this suit. That threat was carried out when the 1<sup>st</sup> defendant on 1<sup>st</sup> September 2006 filed this Chamber Summons under Order XXV Rule 1 and 6 of the Civil Procedure Rules and Sections 3A and 63 (e) of the Civil Procedure Act for security for costs in the sum of Kshs.550,000/= or such other sum as the court may deem just and pending the provision of security the suit be stayed.

The application is supported by an affidavit sworn by one Warui Mwangi, an Advocate employed by the 1<sup>st</sup> defendant as its Chief Legal Officer. Annexed to the affidavit are several exhibits including a copy of a decree in HCCC No.1351 of 1999 in which it was ordered that the costs of the 1<sup>st</sup> defendant and a third party be borne by the plaintiff herein and a Certificate of Taxation for Kshs.408,694.50. The plaintiff has filed nothing in opposition and when the same came before me on 8.2.2007 for hearing neither the plaintiff nor his counsel appeared. The facts deponed in the supporting affidavit are therefore not contraverted. On those facts it is clear to me that the plaintiff may be unable to pay costs to the applicant if the applicant succeeds in its defence at the trial. I am therefore satisfied that my discretion should in the circumstances in this case be exercised in favour of the applicant.

The applicant has sought security for costs in the sum of Kshs.550,000.00 or such other sum as the court may deem fit to order. In my view the figure proposed by the applicant is not unreasonable. In the premises I order that the plaintiff shall provide by way of security for the applicants costs a Banker's Guarantee (by a reputable local Bank) or undertaking from such bank or a deposit in the sum of Kshs.550,000/= in an interest earning account in the joint names of the parties' respective advocates within thirty (30) days from the date of service of this order.

In the meantime, this suit is stayed. The applicant shall have the costs of this application.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 1<sup>st</sup> day of March 2007.**

**F. AZANGALALA**

**JUDGE**

**1/3/2007**

Read in the presenc