



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

Civil Case 1414 of 2004

THOMAS MUTUNGA KITHUNZI.....PLAINTIFF

VERSUS

STANDARD ASSURANCE (K) LTD.....DEFENDANT

RULING

By this Chamber Summons dated 7th July 2005 and expressed to be brought under Order XXV Rule 1 5(1) and 6 of the Civil Procedure Rules, the Defendant seeks orders that the Plaintiff do furnish security for the Defendant's costs in this suit assessed at Shs.800,000/= and to be furnished within 30 days of the order.

The application is premised on the grounds:-

1. That the Plaintiff has instituted this suit claiming loss and damages amounting to Shs.31,211,518/= for alleged wrongful termination of employment by the Defendant.
2. That the Plaintiff's suit is misconceived, ill advised, frivolous and vexatious as the termination of service was as per the terms and conditions of the agreement of employment.
3. That the Plaintiff's claim is bad in law, frivolous and lacks in merit.
4. That the Plaintiff was a former employee of the Defendant and his salary scale cannot cover the Defendant's costs for defending the suit.
5. That the Defendant has no knowledge of any attachable assets of the Plaintiff that can pay the costs for defending this suit of about Shs.800,000/=.
6. The Defendant is apprehensive that in the event that the Plaintiff's suit fails, he will not have the means to satisfy the defendant's costs.
7. That it is in the interest of justice and fair in the circumstances for the Plaintiff to furnish security for costs.

The application is also supported by an affidavit sworn by Isaac Kitur the Legal Officer of the Defendant who avers that the termination of the Plaintiff's contract was in accordance with the Terms and Conditions of Appointment and he was offered two months salary in lieu of notice as stipulated in the terms of the service contract which he declined to take; that the Plaintiff's suit has minimal chances of success and is therefore apprehensive that the Plaintiff might not be able to satisfy the Defendant's costs

of the suit taking into account that his salary was about Shs.50,000/= per month prior to termination of his services and he has no attachable assets.

The application is opposed by the Plaintiff who has filed a Replying Affidavit sworn on 25th October 2005 in which he avers that he has means to satisfy the Defendant's costs in the event he loses the suit as he is engaged in other profitable businesses since his services were terminated.

The action is plainly excessive I agree and the Defendant's application is based on the inability by the Plaintiff to pay costs in the event he loses the claim.

This claim was brought by Thomas Mutunga Kithunzi, a natural person. The basic rule that a natural person who sues will not be ordered to give security for costs however poor he is, is ancient and well established. As **BOWEN L.J said in COWELL VS. TAYLOR [1885] 35 CH D. 34** at 38, both at law and equity, **“the general rule is that poverty is no bar to a litigant”**.

And in **N. ABDULLA VS. PATEL & ANOTHER [1962] EA 447** Sir Trevor Gould Ag. VP 1962 EA 447 said at page. 453:

“It is right that a litigant however poor, should be permitted to bring his proceedings without hindrance and have his case decided.”

I agree that this claim arises out of a simple service contract which contained termination clause and that the claim is a bit exaggerated. But looking at the matter as a whole I have reached the conclusion that the court must not allow the rule to be used as an instrument of oppression by shutting out poor litigants due to inability to meet the Defendant's costs.

The defendant's application is therefore dismissed with costs.

Dated and delivered at Nairobi this 2nd day of May, 2007.

J.L.A. OSIEMO

JUDGE