



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI**

**Civil Case 104 of 2004**

**CHAIRMAN, SECRETARY, TREASURER**

**REVELATION CHURCH OF CHRIST BIBLE STUDY.....  
PLAINTIFFS**

**VERSUS**

**CHAIRMAN, SECRETARY, TREASURER**

**REVELATION MIRACLE CENTRE..... DEFENDANTS**

**RULING**

By a chamber Summons filed on 18<sup>th</sup> May 2006, the Defendants/ Applicants seek to have the plaintiffs ordered to provide security for costs before prosecuting the suit under order XXV rule 1 of the civil Procedure Rules. The applicant also seeks to have the costs of the application provided for.

It is the applicant's contention that the Plaintiff/Respondent is a vexatious litigant who had brought a previous suit against the Defendant raising the same issues as in the present suit, and that the previous suit which was HCCC No. 151 of 2002 was dismissed with costs on the 5<sup>th</sup> October 2004 for want of prosecution and that the Plaintiff has failed to pay the taxed bill of costs of 50,000/= but has instead proceeded to file the current suit.

The Plaintiff/Respondent objects to the application contending that it has no merit.

The advocate for the Respondent has submitted that the principles for an order for security for costs has not been established as what is in issue is not a colossal sum but is in fact an order for eviction, and that the Respondents abode is not untraceable nor are the Respondents impercunious. He has relied on the following authorities in support of this position:

**Lonrho Motors EA Ltd. v/s Insurance Company of East Africa [2005] e KLR.**

**Shalchalaga kwa Jirongo & Another v/s Board of Trustee National Social Security Fund [2005] e KLR**

**Timothy Manyara & 144 Others v/s Pyrethrum Board of Kenya [2005] e KLR**

I have considered the application before me, the submissions of counsels and the authorities cited. I concur that an order for security for costs is a discretionary order which a court can make depending on the circumstances of the case and whether in the opinion of the court it is just and meet to exercise such a discretion. Such circumstances may include factors such as those referred to in the authorities cited i.e. the Respondents place of abode whether the Respondents will be able to pay any costs awarded against it, and whether the applicant has a bona fide defence, but those are of course not exclusive.

In this case it would appear that the main reason for requiring security for costs is the fact that there has been several cases involving the parties and the applicant maintains that the Respondent is a frivolous and vexatious litigant as he has failed to pay costs ordered in the previous suit but has instead brought another suit.

Although the parties generally appear to agree on the existence of the previous suits between the parties i.e. HCCC 151 of 2002 and HC Misc. Cause No. 508 of 1999, the pleadings in respect of these suits have not been laid before this court and therefore it is not possible to determine whether the current suit is res judicata or whether the Respondent is indeed a frivolous and vexatious litigant.

Be that as it may, the fact that an order for costs has been made in a previous suit and has not been met cannot be reasons enough to order for security for costs. There are procedures provided under order XXI of the Civil Procedure Rules for execution and there is no evidence that the procedure provided in these rules have been initiated or exhausted.

I am therefore not persuaded that this is an appropriate case in which I should exercise my discretion in the applicant's favour. The application is accordingly dismissed.

***Dated signed and delivered this 19<sup>th</sup> day of October 2006.***

**H. M. OKWENGU**

**JUDGE**