



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 108 of 2004

TIMOTHY MANYARA & 144 OTHERS.....PLAINTIFF

VERSUS

PYRETHRUM BOARD OF KENYADEFENDANT

RULING

The defendant has made an application under the provisions of **Order XXV rules 1, 5 and 6 of the Civil Procedure Rules** seeking the orders of this court to compel the plaintiffs to deposit the sum of at least Kshs 10,000,000/= as security for costs. The application is based on the grounds that the plaintiffs claim did not stand any chance of being successful. The defendant states that if the plaintiff's suit is dismissed, the defendant's costs would be assessed at more than Kshs 10,000,000/=. The defendant further states that it is certain that it would be impossible for it to recover the costs of the suit from the plaintiffs if the suit is dismissed hence its application for security for costs. The application is supported by the annexed affidavit of Kevin I Mpaka, the Corporate Secretary of the defendant. The application is opposed. The plaintiffs have filed grounds in opposition to the application.

At the hearing of the application Mr Orege, Learned Counsel for the defendant reiterated the contents of the application and the supporting affidavit annexed thereto. He submitted that the grounds of opposition filed by the plaintiffs should be ignored. He urged the court to consider the facts deponed in the affidavit in support of the application which were uncontroverted. Learned Counsel conceded that the plaintiff's suit had been compromised to the extent of the sum of Kshs 8,168,568/84 which sum had been admitted by the defendant. It was contended that the plaintiff's claim for a declaration that their retrenchment was unlawful and further for them to be paid the amount which was deducted as tax from the terminal dues was unmaintainable in law. Learned Counsel argued that the possibility that the court

would award the plaintiffs the sum of Kshs 612,026,588/10 as pleaded in the plaint was remote hence the need for the defendants' interest to be secured by the plaintiffs being ordered to deposit a sum as security for costs.

Mr Wamaasa, Learned Counsel for the plaintiffs opposed the application. He submitted that the defendant had not satisfied the conditions for the grant of the orders sought. He argued that the application had been overtaken by events due to the fact that the defendant had settled part of the plaintiff's claim. He submitted that the fact that the defendant had admitted part of the claim showed that the plaintiffs' suit had raised serious legal issues. He submitted that it was not true as alleged by the defendant that the plaintiffs would not be traced were their suit to become unsuccessful. He submitted that each of the plaintiff had sworn a verifying affidavit indicating his postal address and his place of residence. Learned Counsel argued that the allegations made that the plaintiffs address was unknown was not sufficient to enable this court grant the orders sought. Neither was the allegation that the plaintiffs were poor people.

I have carefully considered the arguments made by the Learned Counsel for the plaintiff and the defendant. I have also read the pleadings filed by the parties to this application. The issue for determination by this court is whether on the facts placed before the court, the defendant has satisfied the conditions set for the grant of an order for security for costs. **Order XXV of the Civil Procedure Rules** does not specify under what circumstances security for courts can be ordered. It however alludes in **Order XXV rule 4 of the Civil Procedure Rules** to a situation where a foreigner has filed suit. It therefore appears that if the place of abode of either the plaintiff or the defendant is unknown then the court may order security for costs. In any event **Order XXV of the Civil Procedure Rules** grants the court discretion to determine under what circumstances security for costs may be ordered.

In the instant application the defendant has sought the plaintiffs to provide security for costs on basically three grounds, firstly that the sum sought by the plaintiffs in their plaint was so colossal that there was a remote chance that the said amount would be awarded by this court. Secondly, that the plaintiffs places of abode were unknown and therefore it would be difficult for the defendant to recover its costs were the plaintiffs' suit dismissed. Thirdly, the defendant contends that the plaintiffs are people of doubtful financial capability who may not be able to raise the costs awarded to the defendant if the defendant was to be successful in the suit. Having carefully considered the submissions made and the proceedings that have already taken place in this suit, I do hold that the defendant has failed to establish that this court is entitled to order the plaintiffs to provide security for costs.

The reasons for the said finding by this court is that the plaintiffs place of abode and postal address have been disclosed in the verifying affidavits which have been filed in court. It would not be difficult for the plaintiffs to be traced if the defendant is successful in this suit. Secondly, the defendant had admitted part of the plaintiffs' claim. Infact the defendant has already paid the plaintiffs part of the claim which it has admitted. An important factor to be considered by the court in making an order whether or not to order for security for costs is the nature of the claim filed by plaintiff and the defence made to the said claim by the defendant. If the court is of the opinion that the claim is unsustainable or

alternatively that the defence of the defendant is spurious, the court may give an order for security for costs to safeguard the interest of such an applicant and secondly to prevent abuse of the due process of the court.

In the current application, the defendant has already admitted part of the plaintiff's claim. The plaintiff's suit cannot therefore be said to be frivolous. Although the claim for the sum of Kshs 612 million by the plaintiffs may be said to be far fetched (*as claimed by the defendant*), that is no reason why this court should make an order for security for costs. Further the fact that the plaintiffs may be persons of little financial capability is no reason why they should be hampered in their pursuit of what they perceive to be their legal right.

For the reasons stated, the application lacks merit. It is dismissed with costs to the plaintiffs.

DATED at NAKURU this 11th day of November 2005.

L. KIMARU

JUDGE