



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**Civil Suit 430 of 2004**

**DAVID CHEGE MWANGI ..... PLAINTIFF**

**VERSUS**

**MUGAMBO WA GACHOCHO CO. LTD ..... DEFENDANT**

**RULING**

This is an application for security of costs under Order 25 Rules 1 and 6 of the Civil Procedure Rules.

The defendant/applicant says that the Plaintiff is a 70 year old litigious person who has filed several suits in court, and who has no formal employment. It wants the Plaintiff to deposit Kshs.300,000/= in court as security towards the costs.

The respondent claims he has sufficient assets, and has explained briefly why he has filed the cases in Court.

I am not satisfied that just because the Plaintiff has no formal employment (at 70 how could he be expected to be in “formal” employment?), or that he is “poor”, or that he is “old” is sufficient reason to order him to deposit security towards the other side’s costs. The most important principle to bear in mind is an individual’s right to access justice, and that right cannot be denied, or made harder, to people who may be poor, old or employed. In fact these are the very people who need protection from others. Even in England, the poverty of a plaintiff is no ground for ordering security for costs (The Annual Practice, 1962, page 1827). In Kenya, too, the Court of Appeal in Noormohamed Abdulla vs Patel (1962) E A 447 affirmed that security for costs is not ordered solely on the grounds of poverty.

Accordingly, this application dated 19th July, 2005 is dismissed with costs.

**Dated and delivered at Nairobi this 1st day of December, 2005.**

**ALNASHIR VISRAM**

**JUDGE**