

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO.185 OF 1998

BENSON WANYONYI,

TOM SEREBI & 38 OTHERS PLAINTIFFS

VERSUS

NARCOL ALUMINIUM ROLLING

MILLS LIMITED DEFENDANT

R U L I N G

The application dated 17th May 1999 and brought under Order 38 rules 1, 2, and 5 of the Civil Procedure Rules is seeking mainly that the Defendants' Directors be arrested and brought to court to show cause why they should not provide security for their appearance to the satisfaction of the court. The Applicant wants them to provide security in the tune of KShs. 5,000,000/-. The grounds upon which the application is made are two, and these are that the defendant is about to close business and its directors leave jurisdiction of the court. Alternatively that the Defendants assets are about to be sold to a 3rd party. There is an affidavit in support of the same application which merely depones on beliefs without giving the reasons for the same beliefs and therefore, offends Order 18 r. 3 of the Civil Procedure Rules. The Respondents oppose the application on grounds that the application is frivolous, vexatious, scandalous and an abuse of the process of court, and that no grounds have been made to justify the granting of the orders sought. There are also two affidavits in reply.

In my humble opinion this application cannot succeed because First the affidavit in support of it as I have said is based on beliefs which are not supported by facts as to the grounds of the same beliefs. Second, the application was filed on 17th May 1999. We are now in September 2002, three years hence and the applicants cannot prove that the directors have all left the jurisdiction nor that the assets have been disposed off nor that the Defendants' business is not going on. The application of this nature should not be made lightly. No party's finances should be tied down on frivolous grounds or on mere beliefs. The application is dismissed. Costs to the Respondents.

Dated this 26th Day of September 2002.

J. W. ONYANGO OTIENO

JUDGE