



DRAFT

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 221 OF 1997

RIMPEX S.A.R.L. PLAINTIFF
VERSUS

HAPA ENTERPRISES DEFENDANT

AND

K.K. GURADS GROUP OF COMPANIES 3RD PARTY

RULING

Chamber Summons dated 18th October 2002 and filed into the court on 24th October 2002 is seeking that the Plaintiff do furnish security for the whole of the costs of the Defendant in the tune of Shs.300,000/-. It is also seeking costs of the application to be provided. The grounds of the same application are three and these are first that the Plaintiff is a foreign company with no attachable assets within the jurisdiction of the court, secondly that the Defendant is unlikely to recover its costs in the event the suit is dismissed since the plaintiff and its directors are foreigners and are not likely to be reached to facilitate execution. The application is supported by an affidavit of David Horsey. The Respondent/Plaintiff opposed the application and filed replying affidavit sworn by Rumongi Longin a director of the Plaintiff company. In that affidavit the Respondent admits that it is registered in the Republic of Rwanda, but that it has several business interest in Nairobi and owns a property Plot No. LR209/10548/58 situated at South C Mugoya Nairobi. It also says that its directors have a sister company registered in Kenya.

I did consider the application and allowed the Respondent to file particulars showing ownership of plot number LR 209/10548/58 situated at South C Mugoya Nairobi but the Respondent has failed to file the same and has not filed any supplementary affidavit as he was allowed to do. On the contrary the applicant has filed supplementary affidavit which clearly shows that the piece of land the Respondent claims to belong to it does not belong to it at all. Thus the Respondent has told the court a lie and does not deserve any sympathies of the court.

The net result of the above is the respondent company is registered outside the court's jurisdiction; the Respondent company has no property in Kenya or at least has not proved that it has any. With that being the case, fear of the applicant are founded. This application succeeds but I feel the amount of

KSh.300,000/- is on the higher side and I will order the Respondent to furnish security for the costs of Defendant in the sum of KSh.250,000/-. The same security to be furnish within 15 days of the date hereof. Costs of the application to the applicant. Orders accordingly.

Dated and Delivered at Mombasa this 26th Day of November 2002.

J.W. ONYANGO OTIENO

JUDGE