

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

civ case 833 of 97

MINAR RESTAURANT LIMITED.....PLAINTIFF

-VERSUS

AVENUE HOUSE LIMITED.....DEFENDANT

Background & Evidence

In this application the applicant is asking for an order that the plaintiff do deposit or provide a Banks Guarantee for a Ksh.9 million or any other sum as they Court may deem fit.

The grounds supporting the application are that the Plaintiff Company being a Limited Liability Company it has not been possible to ascertain its liabilities and that the Plaintiff has only paid a sum of Kshs.200,000/- as mere profit.

The application is opposed on the grounds that the application does not comply with the provisions of Order 38 rules 1.2.4 and 12 of the Civil Procedure Rules and in any case the figure demanded as a deposit is arbitrary.

I have considered the contents of the affidavits in support and against. In the first instance the application is brought by way of Notice of Motion under Order 38 of the Civil Procedure Rules. Rule 12 of this Order requires that application should be made by way of Chamber Summons. While I would not under normal circumstances dismiss the application on this ground, nevertheless it is noteworthy that the Order is applicable when the conditions enumerates Rule (1) (a) (i) (ii) (iii) and (b) happen. This does not appear to be the case in this application where the applicant is complaining that the Respondent being a Limited Company, it has not been able to ascertain its asserts. This is not one of the grounds for making an application for security under the Order and I therefore find that the application to that extend is misconceived.

RULING

Based on these findings the Application is dismissed with costs to the Respondent.

Delivered at Nairobi this 10th day of February, 2000.

KASANGA MULWA

JUDGE