



Vision-One Constructions International (K) Limited v Simei & another (Environment & Land Case E014 of 2022) [2025] KEELC 3534 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3534 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E014 OF 2022**

**AY KOROSS, J
MAY 6, 2025**

BETWEEN

**VISION-ONE CONSTRUCTIONS INTERNATIONAL (K)
LIMITED PLAINTIFF**

AND

**JOHN YIAMIT SIMEI 1ST DEFENDANT
ANNE MUNENE & COMPANY ADVOCATES 2ND DEFENDANT**

RULING

2nd defendant’s case

1. This ruling seeks to determine the notice of motion dated 1/04/2022 that has been moved under several provisions of law. It seeks numerous reliefs from this court, some of which are spent, and the outstanding prayers for determination are: -
 - a. That to the court’s satisfaction and within 7 days, the plaintiff does furnish security for costs to the 2nd defendant.
 - b. That the costs of this motion be costs in the cause.
2. The motion is supported by the grounds set out in the body thereof and the supporting affidavit of Anne Munene, who is the 2nd Defendant’s Managing partner.
3. In summation, she stated the plaintiff’s directors were non-residents in Kenya, and an enforcement of the decree may prove futile. Additionally, the 2nd defendant had been sued in its professional capacity.
4. It was maintained that no cause of action had been disclosed in the plaint against the 2nd defendant, and the deponent read malice in the institution of the suit against it.



5. It was argued the plaintiff owned only one known property in Kenya which was LR No. 12610/120 (I.R. 151120) hereinafter referred to as “suit property”. Moreover, a proposal in the sum of Kshs. 2,000,000/= was made as security for costs.

Plaintiff’s case

6. The motion was opposed by the plaintiff’s grounds of opposition dated 25/04/2022, which can be summarised as follows: -
- a. It was a solvent company operating in Kenya.
 - b. Allegations of its financial incapability to settle costs were unsubstantiated.
 - c. The plaintiff’s directors were both Kenyan and American citizens, which was not sufficient grounds to seek security for costs.
 - d. The joinder of the 2nd defendant stemmed from allegations that the 2nd defendant had never remitted the entire proceeds of sale to the 1st defendant, and the advocate-client privilege had been lifted by the 1st defendant’s pleadings.
 - e. The 2nd defendant is the one liable to tender accounts on remittances of the purchase price.
 - f. The defendants were hell-bent on denying it its proprietary rights.
 - g. The motion was unmeritorious.

Parties’ submissions

7. The court directed parties to file written submissions arguing their respective cases, and in compliance, the 2nd defendant’s law firm on record, M/s. S.K. Opiyo Advocates filed written submissions dated 8/12/2023. In them, counsel submitted on whether the motion was merited.
8. Additionally, the plaintiff’s law firm on record M/s. Mutwiri & Mwangera Advocates filed written submissions dated 5/12/2024. By it and in relying on the grounds of opposition, counsel argued the motion was not merited.
9. Counsel framed 2 issues for this court’s determination: whether the 2nd defendant had proved the plaintiff would be unable to pay costs and whether the defendant had a bona fide defence.
10. Consequently, upon identifying and considering the issues for determination, this ruling shall, later on in its analysis and determination, consider the arguments contained in the submissions on the particular issue and also bear in mind the law and judicial precedents.

Issues for Determination.

11. This court has carefully considered the motion, its grounds, affidavits and submissions and the following issues arise for resolution: -
- a. Whether the motion is merited.
 - b. What orders should this court issue, including an order as to costs?

Analysis and Determination

12. As the outcome of issue (b) flows from the findings of issue (a), these two issues shall be handled together.



13. An order for security for costs can emanate from a statute, regulation and in the case of civil proceedings, as the case herein where this court is a superior court, Section 27(1) of the [Civil Procedure Act](#) applies to it. This provision states as follows: -

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

14. Breathing life into this Section on security for costs, Order 26 of the [Civil Procedure Rules](#) particularly so rule 1 thereof provides that in any suit, the court may order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party.
15. In their submissions, both the plaintiff and 2nd defendant were in consensus courts exercise judicious discretion in considering a motion such as this one and such discretion is usually anchored on law, evidence and reason.
16. Hence, this court concurs with the persuasive decision of [Jayesh Hasmukh Shah v Navin Haria & another](#) [2015] KEHC 6006 (KLR) that was relied upon by both counsels, which stated:-

“7. The law is settled that an order for security for costs is a discretionary one under Order 26 of the [Civil Procedure Rules](#). The discretion is, however, to be exercised reasonably and judicially by making reference to the circumstances of each case. Such matters as; absence of known assets within the jurisdiction of court; absence of an office within the jurisdiction of court; inability to pay costs; the general financial standing or wellness of the Plaintiff; the bona fides of the Plaintiff’s claim; or any other relevant circumstance or conduct of the Plaintiff or the Defendant.

8. The conduct by the Plaintiff will include activities which may hinder recovery of costs, for instance, recent close or transfer of bank accounts, and disposal of assets. And the conduct of the Defendant includes, filing of application for security for costs as a way of oppressing or obstructing the Plaintiff’s claim, for instance, where the defence is a mere sham, or there is an admission by the Defendant of money owing of that there is a deliberate refusal or delay to pay money owing or refusal to perform its part of the bargain.”

17. As held in the Supreme Court of Kenya decision of [Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others](#) [2023] KESC 11 (KLR), when considering a motion for security of costs, the provision of Article 48 of the [Constitution of Kenya](#) should come to the fore as security of costs should not be abused but instead, be used as an instrument that ensures there is a balance of interests between parties in the suit.
18. It is worth observing that to ensure the determination of a case on merits, security for costs is only granted in exceptional circumstances such as extraordinary and important cases and moreover, each case is to be considered on its own merits.



19. In *Westmont* (*supra*), the apex court summarised the non-exhaustive guiding principles on security for costs in the following manner: -

- “ 13. In determining whether it was appropriate to make an order that a party gave security for costs, the court could have regard to the following matters and such other matters as it considered relevant in the peculiar circumstances of each case: –
- a. the prospects of success or merits of the proceedings.
 - b. the genuineness of the proceedings.
 - c. the impecuniosity of the plaintiff.
 - d. whether the plaintiff's impecuniosity was attributable to the defendant's conduct.
 - e. whether the plaintiff was effectively in the position of a defendant.
 - f. whether an order for security for costs would stifle the proceedings and/or impede access to justice.
 - g. whether the proceedings involved a matter of public importance.
 - h. whether there had been an admission or payment in court.
 - i. whether delay by the plaintiff in commencing the proceedings had prejudiced the defendant.
 - j. the costs of the proceedings.
 - k. Whether the security sought was proportionate to the importance and complexity of the subject matter in dispute.
 - l. the timing of the application for security for costs.
 - m. Whether an order for costs made against the plaintiff would be enforceable within the Republic of Kenya.
 - n. the ease and convenience or otherwise of enforcing a Kenyan court judgment or order in the country of a non-resident plaintiff or appellant.
 - o. if the plaintiff was a natural person, an order for security for costs could not be made merely on account of his or her impecuniosity.
 - p. security for costs was to be given in such manner, at such time and on such terms (if any) as the court may by order direct.
 - q. if the plaintiff failed to comply with an order under the instant rule, the court could order that the proceeding on the plaintiff's claim for relief in the proceedings be dismissed.
 - r. the provisions of any Act under which the court could require security for costs to be given such as the *Elections Act*.



- s. a second motion for security for costs would not succeed unless there was an unforeseen and material change in circumstances since the first order for security. An example of an unforeseen and material change in circumstances might be where a plaintiff had come into a sum of money sufficiently large that they could no longer make an impecuniosity argument.
- t. the defendant seeking increased security bears the onus of demonstrating a significant gap between the security ordered and the actual expenses which were not foreseeable and that in hindsight the original request for security for costs was based on an assessment of the complexity of the case which hindsight has established was not realistic.
- u. the jurisdiction to increase or decrease the amount of security already ordered should not be exercised lightly or be used to second guess the court that made the original order, whether on consent or otherwise unless the gap between what was ordered and what later appears to be necessary is significant.”

20. Drawing guidance from the persuasive decision of *Alpha Fine Foods Limited v Horeca Kenya Limited & 4 others* [2021] KEHC 4068 (KLR), the onus lay with the 2nd defendant, who is the applicant, to satisfy the grounds for security for costs to the satisfaction of the court.
21. In this case, the 2nd defendant presented 3 grounds as to why the security for costs order should be given which were the plaintiff’s directors resided out of the country, no reasonable cause of action had been proffered against it and it was being sued in its professional capacity.
22. In this court’s humble view and in agreement with the plaintiff’s counsel, these grounds fall far short of the threshold for several reasons as shall be demonstrated shortly.
23. There is no doubt that the plaintiff is a company with offices in Kenya, and it is a separate legal entity from its directors. As stated by the 2nd defendant, the plaintiff owns the suit property, which is in Kenya. If it is anything to go by, and as alluded to in various documents, its value is about kshs. 60,000,000/= which is a colossal sum.
24. Furthermore, the suing of the 2nd defendant in its professional capacity cannot form a basis for the 2nd defendant to demand security for costs. This court’s understanding of the plaintiff’s claim is that the 2nd defendant acted as an agent of the plaintiff and the 1st defendant in the sale agreement of 9/08/2017 which eventually led to the registration of the suit property in the plaintiff’s name.
25. It is this court’s further understanding of the claim that the purchase price was kshs. 60,000,000/-, which the plaintiff alleges it fully settled through the 2nd defendant, but these sums were not remitted to the 1st defendant by the 2nd defendant.
26. Contrary to the 2nd defendant’s argument and with all due respect to it, the claim against it is not idle, vexatious, reckless or an abuse of court process but one that is genuine.
27. In the circumstances and for the above-stated reasons, this court finds the 2nd defendant’s grounds did not meet the legal threshold.



28. Consequently, and on this basis, I hereby find the notice of motion dated 1/04/2022 is not merited, and since costs follow the event, this court awards costs to the plaintiff. In the end, this court hereby issues the following disposal orders:

a. The notice of motion dated 1/04/2022 is hereby dismissed with costs to the plaintiff.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 6TH DAY OF MAY, 2025.

HON. A. Y. KOROSS

JUDGE

06.05.2025

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In the presence of;

Mr. Muturi for plaintiff

N/A for defendant

Ms Kanja- Court Assistant

