



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Civil Case 27 of 2000**

**LINNER WAMBALA.....PLAINTIFF  
VERSUS**

**CHARLES OWINO & OTHERS .....1<sup>ST</sup> DEFENDANT**

**TRUST BANK LIMITED .....2<sup>ND</sup> DEFENDANT**

**RAJNI SOMAIA .....3<sup>RD</sup> DEFENDANT**

**MAYFAIR HOLDINGS LIMITED .....4<sup>TH</sup> DEFENDANT**

**MILLICENT ATIENO MANGALA .....5<sup>TH</sup> DEFENDANT**

**WRIGHT AUCTIONEERS .....6<sup>TH</sup> DEFENDANT**

**FRANKLIN ARAP BETT .....7<sup>TH</sup> DEFENDANT**

**THE RECEIVER/LIQUIDATION MANAGER**

**OF TRUST BANK LIMITED .....8<sup>TH</sup> DEFENDANT**

**THE ATTORNEY-GENERAL .....9<sup>TH</sup> DEFENDANT**

**DISTRICT ALND REGISTRAR, KISUMU.....10<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR .....11<sup>TH</sup> DEFENDANT**

**DIAMOND TRUST BANK (K) LIMITED .....12<sup>TH</sup> DEFENDANT**

**RULING**

This is a protracted matter. It was first registered in our books in 2000 and later in 2004 more defendants were enjoined. It is a matter pending now for 12 years. In the order of good organization and as required of quick and expeditious justice the matter ought to have been long heard and determined. Indeed if filed under the prevailing Civil Procedure Rules it out to have been concluded 11 years ago. That as it may the application before court is dated 11<sup>th</sup> February, 2006 it was brought by the 4<sup>th</sup> defendant as against the applicant/plaintiff seeking for security of costs of Kshs.300,000/=. The same

is based on the grounds that the respondent is a lady of straw and of no known means nor abode and will be unable to pay the costs of this suit should the court so order, that she is a busy body and an imposter and that the applicant will be greatly prejudiced if the application is not allowed.

Although at the hearing of the application counsel for the respondent was absent. In her grounds of opposition the respondent objected to the application stating that she is a lady of substantial means and ready and willing to file her affidavits of means and itemized her movable and immovable properties further that she has a good case with reasonable probability of success and has made several undertakings and to damages she denied that she is a lady of straw.

In **ABDI ALINUR VRS TRANSAMI KENYA LIMITED HCCC No.651 of 2003 (Milimani) & ALLIANCE MEDIA KENY LIMITED VRS MONIEL 2000 LIMITED [2005] eKL** the court held that there must be credible testimony of the plaintiff's inability to pay costs in the event same is awarded for the court to require a plaintiff to give surety for costs.

In my view and making reference to the above quoted case, this current application has been brought and argued 12 years after filing is rather late in the day such an application ought to have been brought and argued much earlier at the inception of the suit. Secondly the court was not furnished with credible evidence of the plaintiff's inability to pay costs.

In this regard I decline to grant the application and I dismiss the same.

Costs will abide the outcome of the case.

This being an old matter I hereby direct the parties to comply with Order 11 within the next fourteen days hereof and the plaintiff do set the case for case conference within the next 21 days.

**Dated and delivered this 6th day of November 2012**

**ALI-ARONI  
J U D G E**

**In the presence of:**

.....counsel for plaintiff  
.....counsel for defendant