



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Civil Case 74 of 2008**

**RAMADHAN NYANGWESO KANDUWI & 9 OTHERS .....PLAINTIFFS**

**VERSUS**

**1. THE HON. ATTORNEY GENERAL**

**ON BEHALF OF MINISTER OF LANDS & SETTLEMENT**

**2. MUMIAS SUGAR CO. LTD. ....DEFENDANTS**

**R U L I N G**

The application by way of Notice of Motion dated 27.1.12 applies for orders that the plaintiffs be ordered to furnish security for costs in the sum of Kshs.70,000.000/=.

The application is supported by the affidavit sworn by Emily K. Otieno sworn on 27.1.12. Basically, the grounds raised in the said affidavit is that the latest valuation of the parcels of land the subject matter of this suit together with the assets therein is approximately 3,493,574,000/=. According to the applicant, the plaintiffs/respondents were continuously harassing the applicant with law suits thereby exposing the applicant to huge expenses. It is also contended that the respondents have not paid the applicant the costs incurred in the previous cases.

In opposition to the application, the respondents swore two affidavits. One Ramadhan Nyangweso Kandui swore an affidavit on 16.5.12 while Mohammed Suyia Rajali swore another affidavit on 24.5.12. The respondents have contended that they are not harassing the applicant but that they are asserting their rights over their parcels of land which were “grabbed” from them. The respondents have further averred that although their resources are meager, they fully paid the costs in respect of the withdrawn suits to wit High Court of Kenya at Kakamega 87 of 2002 and High Court of Kenya at Nairobi No. 2192/07.

It is further asserted by the respondents that the written statement of defence has not denied the said payment of costs. The respondents have exhibited documents to demonstrate the said payment. These averments by the respondents remain unchallenged by any other evidence from the applicants.

I have considered the application and the reply to the same. I have also considered the submissions by Mr. Otieno for the applicant and by Mr. Menezes for the 2<sup>nd</sup> respondent.

From the authorities cited, it is quite clear that the court has a wide discretion whether or not to order for security for costs (see GULF ENGINEERING (E.A.) LTD. V AMRIK SINGH KALSI)

In the exercise of its discretion, the court will have regard to all the circumstances of the case (see

**KEARY DEVELOPMENTS LTD V TERMAC CONSTRUCTION LTD. & ANO. All ENGLAND LAW REPORTS [1995]** It is also clear that “poverty is not a bar to a litigant” (see KARAM ELAH V AHMED MOHAMED 1929 – 1330 KLR)

The contention by the respondents is that they find themselves in a state of poverty because their land was “grabbed” and they have suffered huge expenses in following up their claims. I have considered this assertion alongside the fact that the costs for the withdrawn suits have been fully paid, there being no averments to the contrary by the applicants. This court is therefore inclined to exercise its discretion in favour of the respondents without locking them out with an order of security for costs.

Issues have been raised on whether the applicants have a bona fide defence based on whether the respondents ought to have filed an appeal from the decision of the Land Acquisition Compensation Tribunal thereby raising issues of whether this court has jurisdiction. The authority cited in support of the said arguments are distinguishable from the case at hand. The case of **DONDE OPUGO & 53 OTHERS V KENYA AIRPORTS AUTHORITY – HC KSM 151 OF 2009**, the dismissal of the suit followed an application for striking out a Plaintiff. The instant application is for security for costs. This is also not the correct forum to address issues on whether the plaintiff was filed without the Leave of the court.

It is also observed that the plaintiff’s suit was filed on 24<sup>th</sup> October 2005. It took the applicant upto 27.1.12 to file the application herein. It seems like the application came up as an afterthought.

All in all, I find no merit in the application and dismiss the same with costs.

*Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of November, 2012*

**B. THURANIRA JADEN  
J U D G E**