



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NYERI
CAUSE NUMBER 1087 OF 2014

BETWEEN

BENSON MAINA NGURE.....CLAIMANT

VERSUS

RIVERDALE BLOOMS LTDRESPONDENT

RULING

1. By a motion dated 26th September, 2014 the Respondents seeks an order that the Claimant do furnish security for the whole of the costs of the Respondents in defending the suit herein. In the alternative the Applicant seeks an order that counsel for the Respondents undertakes to pay the said costs.
2. The motion was supported by a very short affidavits by a Mr. Anthony Mutugi who deponed in the main that the Respondent is currently unemployed and to his knowledge did not have a reliable source of income to enable him pay Respondent's costs if the Court were to dismiss his claim.
3. During the hearing, Mr. Kamunyori appearing for the applicants submitted that from past experiences, his client has had to defend similar suits, incurring legal costs which have never been recoverable whenever similar suits for one reason or the other were withdrawn, dismissed or abandoned by similar Claimants.
4. He further submitted that by bringing the application the Applicant was not demeaning the Applicant however any person who came to Court ought to be ready to bear the consequential costs. According to Mr. Kamunyori, the applicant had a strong defence with a high chance of success hence the application was merited and should be granted.
5. Ms. Ombima in opposing the application submitted that the Respondent had a good case and it would be unjust to add additional burden on him. She further submitted that no evidence had been brought forth to show the Claimant would be unable to pay costs if awarded against him. Ms. Ombima also submitted that access to justice should be for all regardless of their financial status. To support this contention, counsel invited the Court to consider the decision of Visram J(as he then was) in the case of **Chege Mwangi Vs. Mugambo Wa Gachocho Co. Ltd HCC No. 340 of 2004** where the learned judge held that just because the plaintiff had no formal employment or that he was poor, or that he was old, was sufficient reason to order him to deposit security towards the other sides' costs.

6. An order of security for costs is equivalent to a gagging order whose effects would be to impose financial burden on a party as a precondition to proceeding with the prosecution of a suit before a Court of Law. It is in nature a thinly veiled order that appears to cast doubt over the financial capacity of a litigant to meet costs which might be awarded against such litigant in the event that he becomes unsuccessful against the defendant.

7. However, the order is a necessary evil which in appropriate cases can be used to control frivolous claims. So that it ought to be made as a corollary to an argument that the question submitted to the Court for determination is either weak or so borderline that it may not have high prospects of success. In other words an application for security for costs ought not to be premised on the perceived poverty of the Claimant alone without assessing the merit or otherwise of the cause in respect of which he seeks judicial determination.

8. As observed by Justice Visram in David Chege Mwangi's case cited above, the most important principle to bear in mind is an individual's right to access justice, and that right cannot be denied, or made harder to people who may be poor, old or unemployed.

9. The Respondent in this application is seeking the adjudication of a dispute arising out of dismissal from employment by the applicant. According to him, in exercising the right to dismiss, the applicants assigned no reason and carried out the exercise without a human face. The Applicant on its part denies these allegations by the Respondent and in its memorandum of response aver that the Respondent in this application, deserted duties. These are by no means frivolous questions. They form the bulk of the disputes that his Court adjudicates on day to day basis.

10. An application for security for costs ought further to be specific as to the estimated costs that the Applicant hopes to be awarded in the event that he becomes successful. The Court must be able to see the approximate quantum of such costs in order to form an opinion whether the Respondent would not be in position to meet them if awarded.

11. Further, in an application for security for costs, it is not enough to merely allege the inability of the Respondent to meet costs. The Applicant ought to reasonably show by affidavit evidence why he thinks the Respondent may not be able to meet costs.

12. In this application Mr. Mutugi has merely alleged in his affidavit that the Respondent is unemployed and has no reliable source of income. He did give any basis of his opinion that the Respondent did not have a reliable source of income.

13. The foregoing having been said, the Court is of the humble view that this is not a proper case to make an order for security for costs and hereby declines to grant the orders sought with the consequence that the application fails and is hereby dismissed with costs.

14. This order will apply to a similar application in Cause Number 893 of 2014.

15. It is so ordered.

Dated at Nairobi this 11th day of November 2014

Abuodha J. N.

Judge

Delivered this 11th day of November 2014

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge