

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPLA

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**CORAM: HON. JUSTICE L.E.M MUKASA-KIKONYOGO, DCJ
HON. JUSTICE S.G. ENGWAU, JA
HON. JUSTICE C.K. BYAMUGISHA, JA**

CIVIL APPEAL NO. 27 OF 2003

20 **RAMZANALI MOHAMED ALI MEGHANI ::::::::::::::: APPELLANT**

VERSUS

KIBONA ENTERPRISES LIMITED:::::::::::::::::: RESPONDENT

**(Appeal from the Ruling of the Hon. Justice V.R. Kagaba in the High Court of Uganda
Mbarara dated the 4th of August 2000 in Miscellaneous Application No. 42 of 1999
arising from H.C.C.S NO. 10 OF 1999).**

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**JUDGEMENT OF HON. LADY JUSTICE L.E.M.
MUKASA-KIKONYOGO, DCJ**

On perusal of the judgement in draft prepared by Hon Mr. Justice S.G. Engwau I agree that this appeal partly succeeds. I do not have much to add apart from a few comments for emphasis.

In my view the circumstances of this suit justify payment of security for costs. The learned trial judge cannot be faulted on the findings complained of on grounds 1 and 2. He

considered both the appellant's and respondent's pleadings together but not in isolation as claimed by the learned counsel for appellant.

The learned trial judge correctly applied the principles governing the liability to furnish security for costs. I agree that this is a proper case in which to grant an order for security of costs. The appellant does not reside in Uganda and has no known property here. The present case is on almost on all fours with that case of Bank of Uganda versus Banco Arabe Espranol S.C.U civil application No. 20/98. It was held in that appeal that absence of property within the jurisdiction of the court was sufficient to justify grant of an order for security for costs.

However, it would be wrong to grant an order for security for costs in excess. An order for security for costs should not be used as a weapon to enable the strong to deny the weak access to courts of law or justice -See Lindsay Parkison & Co. Ltd versus Triplan (1973) 10. B.M. 609 at page 617. It is conceded that the learned trial judge did not misdirect himself. However, the sum of shs. 80.000.000/= in the circumstances of this case was in my view on the high side. In the absence of evaluation report of the disputed property and the disparity between the figures of shs.30million and shs. 300.000.000/= estimated by the parties there is no justification for payment of that high figure of shs. 80 million. This court is for that reason justified to interfere with the discretion of the trial judge on the quantum of security for costs granted by the lower court.

With regard to likelihood of success of the suit I am unable to find evidence to support the learned counsel's submission that the appellant's suit has no likelihood of success. It is hard to say that the appellant's suit has no likelihood of success when among other things it alleged fraud and error on which no evidence had been adduced at the stage the application for security for costs was made. For the aforesaid reasons I would reduce the sum of shs. 80 million to that proposed by Hon. Justice S.G. Engwau, J.A, that is shs. 15 million. Since Hon. Justice Byamugisha, J.A holds a similar view by a unanimous decision of this court the figure of shs. 80 million is set aside and instead substituted with shs. 15.000.000/ to be deposited by the appellant in the trial court before the hearing of the substantive suit. Each party is to bear its own costs.

DATED at Kampala this...22nd ...day...June.....2004.

HON. LADY JUSTICE L.E.M. MUKASA-KIKONYOGO
DEPUTY CHIEF JUSTICE