

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT WO. 97 OF 1993

MINAWA INN LTD:.....:PLAINTIFF

VERSUS

1. D.A.P.C.B.) DEFENDANTS

2. TREON LTD).....

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

RULING:

This is a chamber application brought under 023 rr 1 and 3 of the Civil Procedure Rules for orders:-

- (1) that the plaintiff-Minawa Inn Limited, deposits in the sum of shs. 10M/= as security for cost before the application to set aside the dismissal order was heard.
- (2) That Respondent/Plaintiff provides cost this application.

The main ground on which the order (1) above is sought is that the Respondent/Plaintiff has no assets and would not be able to meet its obligations to the applicant/2nd Defendant in the case suit was decided in favour of the 2nd Defendant. The Application is supported by an affidavit of Livingstone Kawenja deponed on 1/8/94.

The respondent/Plaintiff strongly resisted the application and relied on the affidavit in Reply deponed on 18/8/94 by Benard Tibesigwa as counsel duly instructed

It is in my view appropriate to briefly give the back ground to the application for clarity. Minawa Inn Limited, the Respondent/Plaintiff is a private limited liability company. Its Managing director is Ibrahim Minawa. The Plaintiff Company had purchased the suit property in 1977 from the U.A.P.C.B. This was a Departed Asian Property on plot No.11 Nakivubo place. But as is common these days, the former owner of the property returned and reclaimed his property. It was returned to him. The Plaintiff/Respondent Company was not happy with the repossession. So it instituted the head suit against the D.A.P.C.B. with the former owner who repossessed the property as the 2nd defendant. The suit was dismissed when the Plaintiff or its Agent failed to appear

at the hearing though the hearing date was fixed in the presence and with the consent of counsel for the Plaintiff. Upon that dismissal order, the plaintiff applied to have the dismissal set aside. It is this application to set aside the dismissal order which the applicant/2nd Defendant now seeks to block until security for cost is deposited in court by the plaintiff Company.

As to jurisdiction, available authorities show that court will order for security for cost where the plaintiff is resident abroad and has no sufficient property within the jurisdiction of the court to meet the possible claim of other litigants and which would be available for execution.

In *Farrab Inc. vs Robson* (1957) EA 441, the following passage was quoted with approval on the principle when security for cost may or may not be ordered.

"Security will not be required from a person permanently residing out of the jurisdiction, if he has substantial property whether real or personal within it. His being so resident (i.e. abroad) makes a prima facie case for requiring him to give security; but it is subject to a well known ordinary exception that if there are goods and chattels of his in this country, which are sufficient to answer the possible claim of Other litigants and which would be available for execution the courts will not order him to give security for cost."

Availability of substantial property real or personal of the plaintiff within the jurisdiction is a criteria for not ordering for security for cost.

In the case before me, the Plaintiff Company is registered in Uganda. Because it is registered in Uganda, there is no prima facie case for requiring the plaintiff to give security for cost. It is within the jurisdiction of the court.

It was contended for the Applicant that the Plaintiff Company has no assets and its only income was that derived from the suit property. That the plaintiff company may not be able to meet its obligations to the 2nd defendant in case the suit was decided in the 2nd Defendant's favour. (paragraph 5 of Kawenja's Affidavit).

Mr. Bwengye submitted that the effect of the above paragraph is that the Plaintiff company is poor and therefore should be ordered to give security for cost. Counsel argued that this was wrong because security for cost is not ordered on the ground of poverty. He cited a number of authorities to support his case, e.g. *Mohamed v. Madani*

(1953) 30 EACA 8 at 11; Noor Mohamed Abdulla v. Patel (1962) EA 441 at 453

I have had the chance to study the above authorities. I agreed with the principle which they re-state that security for cost is not ordered on ground of poverty. I think to order security for cost on ground of poverty would be wrong in principle as that tantamounts to turning court into the arena of only the rich.

Paragraph 5 of the affidavit of Kawenja reads,

"That the 2nd Defendant has to date failed to recover the said cost as the plaintiff has no assets and its only income was that derived from the suit property. It appears therefore that the Plaintiff may not be able to meet its obligations to the 2nd Defendant in case the suit is decided in the 2nd Defendant's favour."

The effect of the above paragraph is that the Plaintiff company is poor. It has no assets and was not likely to meet its obligations to the 2nd Defendant if the suit was decided in favour of the 2nd Defendant. It is true that the affidavits on record do not reveal that the plaintiff company has any asset. Only its Managing Director- Ibrahim Minawa has property. But proverty is not a ground for ordering for security for cost. The Plaintiff company is registered and carries on business within the jurisdiction of the court. Its lack of assets is no ground for ordering security.

In the whole, no sufficient ground has been established to justify an order for security for cost in this case. For the reason the application must fail. It is accordingly dismissed with costs.

G.M. OKELLO

JUDGE.

7/9/94.

Ruling delivered in the presence of Mr. Kawenja for 2nd Defendant.

Mr. Tibesiba for the Plaintiff.

Mr. Ekwanyo Court Interpreter.

G.M. OKLLLO
JUDGE.