

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**H.C.C.S. NO. 1018 OF 1997**

**John Murray (Publishers) Ltd. & 10 Others::::::::::::::::::::::::::::::::: Respondents**

**versus**

**G.W. Senkindu & Anor ::::::::::::::::::::::::::::::::::: Defendants**

**BEFORE: The Hon. Principal Judge Mr. Justice J.H. Ntabgoba**

**RULING**

This is a chamber summons application under order 23 rule 1 of the Civil Procedure Rules requiring the respondent/plaintiff to furnish security for costs in the sum of UG Shs. 25 m/= to secure the defendant's costs in case the plaintiffs lose the suit against the defendant.

The application arises from the suit instituted by the respondents against the applicant and another. It is alleged in the plaint that the applicant who is the first defendant in the suit was found selling books which were found to be counterfeits of the plaintiffs genuine books. The applicant/defendant admits that he was selling those counterfeit books in his shop but that since he did not know that there were the plaintiffs' genuine books, and that since the counterfeit books were sold to him by the second defendant, he is wrongly sued. He also claims that those counterfeit books found in his shop were seized by the Police on the instructions of Counsel for the plaintiffs.

In this application, the applicant in his supporting affidavit, gives the following as reasons why the plaintiffs should be ordered to furnish security for costs:-

- (a) that the plaintiff's case is frivolous and vexatious;
- (b) that he has a good defence to the suit with high chances of success; (c) that the 1<sup>st</sup> plaintiff which is a limited liability company is neither incorporated in Uganda nor is it therein registered; and that the second plaintiff does not reside nor do business or

have assets in Uganda and both are outside the jurisdiction of this court.

- (d) that in the event the main suit is determined in favour of the applicant it will not be possible to execute the court orders as to the consequent costs against the plaintiffs as they are outside the jurisdiction of this court and in any event, it will not only be difficult but also costly to execute this courts orders and decree outside its jurisdiction and it will cause a miscarriage of justice.
- (e) that in the circumstances it will be equitable and just if the plaintiffs are ordered to furnish the sum of Shs. 25m/= as security for the applicant's costs.

In the affidavit in reply sworn by George Nicholas Perren, the Managing Director of the first plaintiff, he depones that:-

- (a) the application is misconceived as it does not conform with the considerations a Court has to take into account before application for security for costs is granted;
- (b) that the 1<sup>st</sup> respondent is a large international company and the second respondent is a well known author and, together, they sell books in Uganda through a recognised agent (Messrs. Aristoc Booklex) and therefore it would not be impossible to execute any Court orders as to costs that may accrue to the applicant as a result of the suit.
- (c) the respondents are based in the United Kingdom, and Uganda has. reciprocal enforcement of judgments with the United Kingdom and as such there is no need to grant the application for security for costs as **the applicant can collect any costs that may accrue using the assistance of the United Kingdom law enforcement machinery.**
- (d) it is not in the interests of justice to allow this application.

I think the first consideration in applications of this nature is whether the respondent has goods and/or chattels of his in the jurisdiction of this court which are sufficient to answer the possible claim of the other litigant, and which would be available to execution when the court will order him to give security for costs (see the words of LORD HALSBURY in the Classic Case of APOLLINARIS COMPANY'S TRADE MARKS [1891] 1 Ch.1).

In this case, the plaintiffs do not have any property in Uganda and therefore we are led to another consideration which follows. When a person instituting a suit in this Country, and being abroad, Court must ensure that when an adverse order is effectually made against him it will be possible to execute against him even if he has no property in this Country. The decision of Edmonds, J, in the Supreme Court of Kenya Case of VALABBDAS HIRJI KAPADIA - vs - THAKERSEY LAXMIDAS [1960] E.A. 852, was that it is not in every case in which the plaintiff has no property in the jurisdiction that an order for security for costs is granted. In that case the defendant applied for security for costs on the ground that the plaintiff was ordinarily resident at Zanzibar and outside the jurisdiction of the Kenya Court. The plaintiff submitted that no order should be made as by S.3 of the Judgement Extension Decree, Cap. 23 of Laws of Zanzibar, a decree obtained in any Court in Kenya could be transferred to Zanzibar for execution as if the decree had been obtained in Zanzibar. It was held that in view of the Extension of Judgements Decree of Zanzibar "The evil against which the rule for security for costs sought to guard largely disappeared".

In the instant case the plaintiffs' argument is that even if they have no property in Uganda there exists between Uganda and the United Kingdom where they reside a machinery known as reciprocal enforcement machinery and that as such "the applicant can collect any costs that may accrue using the assistance of the United Kingdom law enforcement machinery"

This is a valid argument so long as it is proved that the plaintiffs have property or chattels in the United Kingdom. In this case there is nothing in the plaintiffs' affidavit in reply to pinpoint their property in the United Kingdom if any. Nor is their any value of any property they may own there. Besides, I do not think that the decision in vallabhdas Hirji Kapadia - vs - Thakersey Laximidas (supra) would necessarily apply in every situation. Execution in Zanzibar by a judgement creditor in Kenya would not be as mostly as execution in England by a judgement creditor in Uganda. The proximity of the two countries, the time and financial

expenses, and even exchange control regulations, as well as taxation policies etc. are some of the considerations the court should make. Where the judgement creditor lives in Uganda and the judgement debtor's property is in England, this court, taking into consideration other circumstances, would decline to order security for costs. However, it is to be observed that the plaintiffs in this case have not even shown that they have any property or chattel in England and, if they have, what sort of property. The property should be such as would satisfy the costs of the applicant in the event he won the case.

Another reason advanced by the respondent why the order for security for costs should not be granted is that they are big and internationally renowned and that, as for the first respondent, it sells books in Uganda through Aristoc Booklex, which the respondents refer to as the agent of the first respondent. The mere fact that the respondents sell books to Aristoc Booklex is not, by itself, proof that Aristoc Booklex is the agent of the respondent. When the respondent sells books to Aristoc Booklex the title in that book passes to conduct of his defence in this case. But that to me could be anybody's guess until the hearing of the case is completed and the costs are taxed.

Doing the best I can and applying my discretionary powers under the applicable rule, I order that the respondents deposit or furnish security for costs in the sum of Shs. 15,000,000/= (Fifteen Million Shillings only).

I so order

**26.10.98**