

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA, AT KAMPALA**  
**MISC. APPLICATION NO.338 OF 2001.**  
**(Arising From C.S.No.333, of 2001)**

**THE JUBILE INSURANCE COMPANY OF UGANDA LTD:::::::::::::::::: APPLICANT**  
**VERSUS**  
**KREDIET GENEVE INC::::::::::::::::::;:::::::::::::RESPONDENT**  
**BEFORE: V.F.MUSOKE-KIBUUKA (JUDGE)**

**RULING**

The Applicant, by way of chamber summons under Order 23 rules 1 and 3, seeks, from this court, an order for security for costs against the respondent. Both parties are companies. The application is based upon a single ground, that the respondent is a foreign company with no known assets in Uganda.

In brief, the background to the application is as set out below.

The applicant is a limited liability company incorporated in Uganda. It operates insurance business in the country. The respondent appears to be a financial institution of some sort.

On 24th April, 2001, the respondent instituted a suit against the applicant jointly with one Paulo Kalule Kagodo. In that suit the respondent sought to recover a sum of shs. 20,063,900/= in special damages which the respondent alleged to have arisen out of an alleged deceitful presentation of facts to him. The respondent claimed to have acted upon the presentation to his detriment.

The details of the alleged presentations are that the respondent, in 1998, agreed with one Julius Kwanya to enter into a credit arrangement. Julius Kwanya offered the property of Paulo Kalule Kagodo, the first defendant in Civil Suit 333 of 2001, as security for the loan. The property

offered was plots 136 and 137, Block 192, at Ngandu Kigombya in Mukono District. Paulo Kabule Kagoda is said to have presented his property as being worth Shs. 14,000,000/.

For the same transaction, and in addition to the property mentioned above, the applicant is said to have provided an insurance policy which was a fire policy over the security. The fire policy presented the property as worth Shs. 14,000,000/=.

Julius Kwanya defaulted in repaying the loan of US \$ 6,000 advanced to him by the respondent. It was then that the respondent found out that the property was worth much less than the value that is alleged to have been presented to him by Paulo Kalule Kagodo and the applicant. Hence the institution of civil suit 333 of 2001 to recover the loss.

The application was argued before me by Mr. David Mpanga, learned counsel for the applicant, and Mr. David Bagorogoza, learned counsel for the respondent.

Mr. Mpanga's main argument were, first that it was not in dispute that the respondent was a foreign company without any known assets in Uganda. He relied upon paragraph 2 of the affidavit of Mr. Deepak Pandey, in support of the application and paragraph 2 of the affidavit of Mr. Bagorogoza David, in reply, both of which were in agreement on that fact. Mr. Mpanga relied upon the decisions in Farrab incorporated Vs. Brian John Robinson And Others 19571 E.A. 441, and this court's decision in M/S Unidrom Ltd V.S M/S Kawesi & Co. civil Suit No. 878 of 1990. Second, Mr. Mpanga argued that the applicant had a good and viable defence to Civil Suit 333 of 2002 and was likely to succeed.

Mr. Bogorogoza on the other hand, argued that even though the respondent was a foreign company without any assets in Uganda, but all the same for the applicant to obtain the order for security for costs, it was not enough to simply show that the respondent was a foreign company

without any assets in Uganda. The applicant out to show, in addition, that he is being put to undue expense by defending a frivolous and vexatious case. He relied upon this court's decision in Anthony Namboro and Fabian Waburoko Vs. Henry Kaala (1975) HCB 315. He submitted that the respondent had a very good case against the applicant and the application should be rejected. Learned counsel also cited the decision of this court in Hariprasad Ramabai Patel vs. Bakubhai Kalidas Patel [1 992-1 9931 HCB 137].

I have considered all the arguments by both learned counsel. I have also carefully examined the authorities which each of them cited in his submissions before me.

As the Supreme Court of Uganda did observe in a recent decision, and probably the leading authority on the subject of security for costs, namely, G.M. Combined (U) Ltd. Vs. A.K. Detergents (U) Ltd. [1997] HCB 40, the power to order for security of costs is purely a discretionary one. It must always be exercised in very special circumstances taking into account the nature, purpose and circumstances of the case.

The special circumstances of the instant case is the fact that the respondent is a foreign company without any known assets in Uganda. Indeed, in the pleadings, it is not even revealed in which country the respondent country is registered or carrying on business. The country of the respondent's residence is thus not known. For that reason alone it appears to me that the special situation in the instant case is stronger than the ones which the court faced in Farrab Incorporated Vs. Brian John Robson And others (supra) and M/S Unidrom ltd Vs. M/S Kawesa & Co. (Also supra) where the countries of incorporation and locations of businesses of respondent companies were revealed or known and which were in a neighbouring country.

To borrow the phraseology of Lord Halsbury, quoted with approval by Connell .J. of the Supreme Court of Kenya in Farrab's case, the fact that the respondent is a foreign company with no known assets in Uganda and coupled with the fact that even the country of the plaintiff's residence or

the place where the respondent carries on business have not been revealed, ‘makes a prima facie case for requiring him to give security’

The Supreme Court of Uganda stated in the G.M combined (U) ltd. case (supra), that in considering whether to order security for costs or not, the likelihood of success of the plaintiff’s case should be a major consideration. In weighing the merits, the court considers whether the applicant is being put to undue expense by defending a frivolous and vexatious case. Mr. Bagorogoza has laid a lot of emphasis upon his submission that the respondent, in the instant case, has neither a frivolous nor a vexatious case. He has contended that the respondent has very good prospects of succeeding.

Order, JSC, in the G.M Combined (U) Ltd. case, (supra) had the following to say about the assessment of the prospects of the merits of the prospective cases when a court is considering the an application such as the instant one. On page 21 of the judgment, the learned justice stated:

“In a nutshell, in my view, the court must consider the prima facie case of both the plaintiff and the defendant. Since a trial will not yet have taken place at that stage, an assessment of the merit of the respective cases of the parties can only be based on the pleadings, on the affidavits filed in support of or in opposition to the application for s.f.c and any other material available at that stage.”

It is significantly notable that the court in the G.M Combined (U) ltd case, was dealing with an application for s.f.c which involved parties which were both resident and had known assets within the country. The position is very different with regard to the instant case. In addition, from the pleadings per se, at this stage, and considering the nature of the claim involved in civil suit No. 333 which is misrepresentation, it appears to me to be inappropriate at this stage, to say that one of the parties has higher prospects of success on the merits than the other. I am, therefore, of the strong view that the prima facie providing justification for the respondent to provide s.f.c in

this case remains and for that reason, the applicant shall have the order which he seeks in this application.

Regarding the amount to be provided as s.f.c, the applicant has provided no skeleton bill of costs to give guidance to this court. See G.M Combined (U) Ltd case. (Supra)

However, it is settled law that the amount of security awarded in a case such as the instant one, is within the discretion of the court, which will fix such sum as it thinks just having regard to all the circumstances of the case. In the instant case, I have considered all the circumstances and I am satisfied that a sum of Shs. 4,000,000/= is adequate security for the costs of the applicant on a full indemnity basis in civil suit number 333 of 2001.

Accordingly, the respondent is ordered to provide s.f.c in respect of Civil Suit No. 333 in the sum of Shs. 4,000,000/= to be by bond to the satisfaction of the registrar. The time within which the bond is to be filed is 30 days from the date of the delivery of this ruling. Costs of this application are to abide by the outcome of the main suit.

**V.F.MUSOKE-KIBUUKA (JUDGE)**

**15-12-2002**