THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION MA 107/2013

(Arising from High Court Civil Suit No. 381 OF 2012)

MEDDIE SSENTONGO:::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

 VERSUS

1. DAVESHAN DEVELOPMENTS LTD
2. DAVID GREENHALGH:::::::::::::::::::::::::::::::::::::::::::RESPONDENTS

**BEFORE THE HON. JUSTICE HENRY PETER ADONYO**

**RULING**

1. **Background to this Application**

The Respondents in this suit filed a suit against the Applicant and Shanita Namuyimbwa inter alia seeking recovery of sum of USD 3,600,000/- as money had and received by the Applicant and his fellow defendant then.

The Respondents entered into a consent agreement with the said Shanita Namuyimbwa and this was recorded as a consent judgment in this Honourable court and therefore the Respondents are demanding now pursuing the recovery of United States Dollars Three Million Only (US$3,000,000) from the Applicant.

The Applicant filed this particular Application for Security for costs against the Respondents on grounds that;-

1. The Respondents are putting him to undue expense by defending a frivolous suit.
2. That he has a good defence that is likely to succeed against the respondents’ suit.
3. The Respondent’s have no known assets within the jurisdiction of this court for him to have recourse to in the event that he successfully defends their suit.

The Respondents on the other hand contend that this Application is misconceived.

1. **Resolution of this Matter**

The powers to order a deposit for security for costs under **Order 23 Rule 1 of the Civil Procedure Rules** are absolutely discretionary. The court may order for the payment of costs incurred by the defendant if it deems fit to do so.

No specific conditions or criteria are imposed before the court can or ought to exercise this discretion.

This is the position that was echoed out by the learned justices of the Supreme Court in the case of **G.M Combined (U) Limited versus A.K Detergents (U) Limited C.A No.34 of 1995.**

It is worth noting that the hearing of this particular case has already begun and the case is being handled in a backlog session by this Honourable court and in this regard this Honourable Court has already set dates within which this matter will be heard its expedient disposal.

I have had the opportunity to peruse the submissions presented by either side on this matter and the same are on record. I thank both counsels for the research they put in arguing this matter. I take particular note of the fact in his submission, counsel for the Respondents argued that should the court be inclined to exercise its discretionary powers and award any security for costs, then it should not award a figure exceeding Uganda Shillings Twenty Million( Ug. Shs. 20, 000,000/=). The Applicant on the other hand seeks an amount f Uganda Shillings One Hundred Six Million, One Hundred Fifteen Thousand (Ug. Shs 106,115,000/=) on the basis that the Second Respondent has particularly no claim against the Applicant and that relying on the case of **Anthony Namboro & Another versus Henry Kaala [1975] HCB 315** which was followed by the case of **GM Combined (U) Ltd. versus AK Detergents (U) Ltd. SCCA No. 34 of 1995,** the applicant was being put to unnecessary undue expenses upon being called to defend a frivolous case and vexatious suit to which he has a good defence, yet factors of inability by the respondents the costs ought to be taken into account.

My resolution of this matter is that upon considering the submissions of both counsels and given the fact that the main suit has already been given priority for its expedient disposal and thereby ameliorating in some measure some of the costs which would be incurred and hence allaying any anxiety, I would think that an award order for Uganda Shillings Fifty Million Only (Ug. Shs. 50,000,000/=) as the deposit for security for costs would be in some measure assuring and reassuring a figure that the Respondents may be comfortable with in order not stifle the expedient progress of the hearing in this matter which has so far done well.

1. **Order**

I order that the Respondents deposit in this court the sum of Uganda Shillings Fifty Million Only (Ug. Shs. 50,000,000/=) as security for costs.

As for the costs of this Application, I would order it to be in the cause.

I make this order at the High Court Commercial Division at Kampala, this 26th day of May 2014.

**HENRY PETER ADONYO**

**JUDGE**