

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

**CORAM: HON. JUSTICE AMOS TWINOMUJUNI, JA
(SINGLE JUSTICE)**

–

CIVIL APPLICATION NO.147 OF 2007

**THE REGISTERED TRUSTEES OF
MUSLIM ASSOCIATION }.....APPLICANT**

V E R S U S

KAMPALA CITY COUNCILRESPONDENT

[Arising from Civil Appeal No.81 of 2005]

(Security for costs)

RULING:

This is an application by Notice of Motion under Rules 2(2), 42(2), 43 and 105(3) of the Court of Appeal Rules. The application seeks orders that:-

- a) **The respondent/appellant furnishes security for costs in the High Court of Uganda within a period to be determined by Court in the sum of shillings 25,000,000/= (twenty five million Uganda shillings) failing which the**

appeal should be dismissed with costs.

- b) The respondent furnishes further security for costs of the appeal in this Court within the period to be determined by the Court in the sum of shs.50,000,000/= (Uganda shillings fifty million) failing which the appeal should be dismissed with costs.**
- c) Costs of this application be provided for.**

The application is supported by an affidavit sworn by one Yusuf Shabdin stated to be the Chairman of the applicant on 17th August 2007 in which he deponed:-

- “3. That I am acquainted with the issues which led the applicant/respondent to file Civil Suit No.999 of 2000 in the High Court in which the Court awarded them shs.820,900,000/= (Eight hundred and twenty million nine hundred shillings) mesne profits plus interest and costs.**
- 4. That I am aware that our advocates have been in contact with the advocates for the respondent/appellant and that they have jointly held meetings with the respondent/appellant to try and settle the issue of payment amicably but that the meetings have not resulted in any amicable settlement.**
- 5. That I have also been advised by the Lawyers whose advice I verily believe that the costs in the Court of Appeal are likely to be over shs.25,000,000/= which the respondent/appellant is unlikely to pay in addition to the costs in the High Court if security for those costs is not deposited in this Court.**
- 6. That I have also been advised by the same Lawyers and I verily believe them that the respondent/appellant’s chances of success in the appeal is very slim and minimal.**

7. **That in the light of costs in the High Court which are not yet paid by the respondent/appellant as demanded and in the light of the costs of this appeal, I believe that the sum of shs. 75,000,000/= (seventy five million shillings) would be just and reasonable in the circumstances of the case, and that a period of one month be given for the respondent/appellant to furnish the security for costs.**

8. **That it is in the interest of justice that the respondent/appellant is ordered to furnish security both for costs in the High Court and in this Court failing which the respondent/appellant's be dismissed with costs."**

The respondent filed in reply an affidavit of Ruth Kijjambu, the Town Clerk of the respondent in which she deponed, among other things, that the applicant is local authority and has the capacity to pay whatever costs may be ordered by the court.

At the commencement of the hearing of the application, Mr. Gerald Kakuba, learned counsel for the applicant applied to amend the motion in two respects:-

- a) That the second prayer be amended to pray that the respondent be required to furnish security for costs in the sum of Ug. Shs.50,000,000/= [Fifty million] for the estimated costs of the pending appeal.

- b) That the prayers should include a request that the respondent be ordered to deposit Ug. Shs.810,000,000/= for security for due performance of the decree, the amount being the decretal amount in HCCS No.999 of 2000 from which Civil Appeal No.81/2005 arose.

Mr. Sendege, learned counsel for the respondent did not seek to oppose the application which I granted.

As soon as Mr. Kakuba stated his submissions, I asked him whether he honestly believed that if this court awarded his client Ug. Shs.50,000,000/= in costs at the determination of the appeal, the respondent would be unable to pay the money. Mr.

Kakuba replied that he believed that the respondent has the capacity to pay whereupon he agreed to abandon that prayer altogether. That left only one prayer, the request that the respondent be ordered to furnish shs.810,000,000/= as security for due performance of such a decree or order that the court may ultimately decree. Mr. Kakuba submitted that the reason for the prayer was that the appeal had no chance of success at all. Mr. Sendege pointed out the fact that though Mr. Kakuba had introduced this aspect of the Notice of Motion by way of an amendment, no affidavit was filed to support his assertion in court that the case had no chances of success or that the respondent would be unable to pay the ultimate decree.

I agree with Mr. Sendege that if Mr. Kakuba wanted to rely on this leg of his application (as amended), he should have filed an affidavit to support it. As matters stand, the only affidavit, that of Yusuf Shabdin, which he relied on does not say anything about the decretal amount of Ug. Shs.810,000,000/= or the alleged respondent's inability to pay the money. The respondent is rich and powerful Local Authority possessing property and incomes worth billions of Uganda shillings. It is in the process of being transferred to operate under the control and direction of the Central Government of Uganda. The argument that it is not capable of paying a mere shs.810,000,000/= cannot be sustained. I do not find any merit in this application which I must dismiss with costs to the respondent in any event.

Dated at Kampala this ...30thday ofJune.....2008.

Hon. Justice Amos Twinomujuni

JUSTICE OF APPEAL.