

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 456 OF 2022**  
**(ARISING FROM CIVIL SUIT NO. 001 OF 2021)**

**SPEKE HOTEL 1996 LIMITED**  
**(T/A SPEKE HOTEL APARTMENTS).....:APPLICANT**

**VERSUS**

**SHEILA NADEGE A.K.A DON ZELLA.....:RESPONDENT**

**BEFORE HON. JUSTICE MUSA SSEKAANA**

**RULING**

The applicant brought this application under O. 26, r 3 of the Civil Procedure Rules S.1 71-1 CPR for orders that the respondent furnishes security for costs in HCCS No. 001 of 2021 as well as costs of this application.

The respondent brought a suit against the applicant under Civil Suit No. 001 of 2021 for recovery of special damages and loss amounting to 456,250,000/= (USD 125,000) general and punitive damages contending that on 25<sup>th</sup> December 2020 she rented apartment No. 107 & 512 at Speke Apartments Plot 19, Wampewo Avenue.

The respondent contended that thieves at around 4pm in the evening while the plaintiff was away entered and broke into one of the said apartments i.e 107 and stole her property.

The defendant/applicant contended that the respondent conspired with Male Shanitah and the alleged burglar Adome Jeremy to stage a purported burglary on apartment 107 on the 25<sup>th</sup> December 2020. The respondent were using counterfeit money in different currencies of United States Dollars and Euros in their staged burglary.

The applicant contends that the suit filed by the respondent is frivolous, misconceived and vexatious and it discloses no cause of action. The applicant contends that he is being put to unnecessary costs and expenses defending a bad and frivolous suit.

The applicant has a good defense and counterclaim against the respondent and therefore the applicant is likely to be unable to pay costs if ordered by this court.

The applicant has no known source of income and neither does she have any known abode or property in Uganda that can be attached upon failure to pay costs.

That the respondent is not ordinarily domiciled within Uganda which is the jurisdiction of this honourable court.

The following issues were raised for determination.

1. Whether there are sufficient grounds for a grant of an application for security for costs to the applicant/defendant against the respondent/plaintiff.
2. Whether there are any remedies available to the parties.

The applicant was represented by *Mr. Rashid Ssemambo and Mr. Lukwago David* whereas the respondent was not represented in this applicant inspite of the respondent's counsel-Semuyaba, Iga and Co Advocates having been duly served with the application and hearing notice on 10<sup>th</sup> May 2023.

The applicant counsel was directed to file submissions which this court has duly considered in this ruling.

### **DETERMINATION OF ISSUES**

*Whether there are sufficient grounds for a grant of an application for security for costs to the applicant/defendant against the respondent/plaintiff?*

Counsel for the applicant submitted that security for costs is granted at the discretion of court. The applicant contended that they are being put to unnecessary expense since the respondent's suit is frivolous sand lacks a legal basis or legal merit.

Counsel outlined the main considerations to be taken into account in an application for security for costs as laid down by *Ssekandi Ag. J., in Anthony Namboro and Anor versus Henry Kaala [1975] HCB 315* to include;

- a) Whether the applicant is being put to undue expenses by defending a frivolous and vexatious suit;
- b) That he has a good defense to the suit which is likely to succeed.

The applicant's counsel submitted that the respondent suit does not disclose a cause of action since the Guest-Advance-Credit Card Receipt and Guest Registration Form indicate that a contract was entered into between the applicant and Ms Male Shanita and not the respondent, Sheila Nadege. Prima facie there is no contract between the applicant and respondent that would form the basis of this suit.

The respondent has no locus to institute this case against the applicant thereby making it frivolous and vexatious.

The applicant further contends that the police investigations and photographic evidence shows the actual burglar was Adome Jeromy and upon being arrested and interrogated by police the said Adome admitted having been assigned by respondent and Shanita.

The applicant has a good defence to the frivolous claim

## **ANALYSIS**

Although it is a fundamental principle that a person who asserts a claim should have access to justice, there are particular circumstances in which he should be required to provide security( if such an order is just in the circumstances of the case) because of the risk that the defendant may not otherwise recover his/her costs.

I have carefully considered the Applicant's application, the affidavit evidence, the laws cited as well as the authorities which have been cited by counsel. This application was not opposed by the respondent it would therefore mean that the

evidence of the applicant is unassailed and the same is admitted as presented to this court.

As far as this issue is concerned, the governing law is *O.26, R.1 of the Civil Procedure Rules*. The considerations for grant of an order of security for costs were considered in *Namboro & Fabiana Waburo versus Henry Kaala [1975] HCB 315* and these are;

- a) Whether the Applicant is being put to undue expenses by defending a frivolous and vexatious suit,
- b) That he or she has a good defense to the suit which is likely to succeed.

According to the same case, it is only after the above two elements have been considered that factors like inability to pay may be taken into account.

In determining whether the two considerations above have been proved, the observations of Oder JSC in *G.M. Combined (U) Ltd versus A. K. Detergents (U) Ltd. SCC.A. No. 34 of 1995*, are instructive. He observed thus;

*"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 this 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 security for costs and any other material available at this stage."*

I shall therefore proceed to determine whether the Applicant and the Respondent have a prima facie case by only looking at their respective pleadings and

affidavits. I shall consider the submissions of the parties regarding the two main considerations.

Whether the Applicant is being put to undue expenses by defending a frivolous and vexatious suit.

A plaintiff should never be permitted to litigate on an unlikely claim and leave the defendant with a paper judgment for costs.

The relative strengths and weaknesses of the plaintiff's and defendant's cases are normally considered. Although the court does not normally conduct a detailed examination on merits of the case (unless the issues are clear), it does consider, on the face of the materials before it, whether the plaintiff or defendant has a good chance of succeeding. *Frantonios Marine Services Pte Ltd v Kay Swee Twan* [2008] 4 SLR(R)224 at (50-51)

The case of *R vs Ajit Singh s/o Vir Singh* [1957] EA 822 at 825 defined a *frivolous* and *vexatious* suit as one that is; "*Paltry, trumpery; not worthy of serious attention; having no reasonable ground or purpose.*" Oder JSC in *GM Combined (U) Ltd vs AK Detergents (U) Ltd* [1992]2 E A 94 as regard 0.26 r.1 to state that;

*"...a major matter of consideration is the likelihood of the plaintiff's case succeeding. If there is a strong presumption that the defendant will fail in his defence to the action, the court may refuse security for costs. It may be a denial of justice to order a plaintiff to give security for the costs of the defendant who has not defense to the claim...."*

Premised on the above authorities, the respondent filed the suit claiming negligence on the part of the applicant but it clear the respondent never had any

contract between herself and the applicant. The said room was booked by a different person-Shanita Male, this therefore means the applicant has no cause of action against the applicant contractually or otherwise.

That the Applicant a good defense to the suit which is likely to succeed

As regards this element, Counsel for the applicant cited GM Combined (U) Ltd versus AK Detergents (U) Ltd (supra), and noted the observations of Oder JSC pertaining the finding of a prima facie defense. The applicant's defence has not been rebutted conclusively and it remains very plausible.

The nature of the case before court shows that the respondent claims are frivolous and vexatious since the respondent does not have a contract with the applicant. The respondent seems to be in collusion with the suspected burglar and the whole robbery or burglary was stage managed to seek compensation wrongly from the applicant and also to tarnish the applicant's business image.

Having considered the above, I shall now address whether the Respondent will be unable to pay costs to the Applicant's in case judgment in the main suit is passed against it.

The court must consider all the circumstances of the case in order to determine whether it is just to order that security be provided.

According to the Applicant's Counsel, the Respondent will not be able to meet costs of the main suit on ground that she neither has any property nor has any known source of income in Uganda.

In the case of *Samwiri Musa vs Rose Achen [1978] HCB 297* court proposed that where facts are deponed to in an affidavit and they are not rebutted, they are deemed as admitted by the opposite party.

Since the applicant's affidavit was not opposed then it is clear that the same is true and should be regarded as such. The respondent has no known property in Uganda or income or business. This is also worsened by the fact that she is domiciled or resident in the United States of America.

The courts have emphasized that impecuniosity of the plaintiff is not a basis on which the court would order security for costs. The reasoning here is that an order for security on this ground alone would prevent access to justice because of a party's pecuniary position (despite the established principle that poverty must not be a bar to litigation. *Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd [1987] SLR (R) 746*

In the case before this court, the Applicant claims that the Respondent has no known source of income and that with the knowledge of her previous frivolous actions, it is only prudent that to have the latter pay security for costs for this matter which will ably be returned to the respondent in the unlikely event of success of the main suit. This claim has not been refuted by the respondent.

An order of security for costs protects the defendant in some cases where, in the event of success, the defendant may have difficulty in realizing costs from the plaintiff. The mode of security should be of a type, and its amount should be sufficient, to protect the defendant's position as to costs and yet not to stifle the plaintiff's claim.



After consideration of the circumstances of this case, I find it appropriate to order the Respondent to furnish security for costs of UGX. 20,000,000/= being the costs incurred and likely to be incurred by the applicant. The respondent will deposit this money within a period of 3months from the date of this order. Alternatively, the respondent/plaintiff may provide a bank guarantee or a bond within one month.

The application is henceforth allowed.

Costs shall be in the cause.

I so order.

**SSEKAANA MUSA**  
**JUDGE**  
**07<sup>th</sup> July 2023**