

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 150 OF 2006**

**KULVINDER KAL MATHARU . . . . . PLAINTIFF**

**VERSUS**

**1. MEGADEPOSITS EXPLORERS (T) LTD  
2. HYDRO GEOS CONSULTING GROUP  
TANZANIA LIMITED . . . . . DEFENDANTS**

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*Date of last order – 20/9/2007*

*Date of Ruling – 20/11/2007*

**R U L I N G**

**Shangwa, J.**

This is an application for an order against the plaintiff/Respondent to deposit security for costs in this suit. It has been filed on behalf of the defendants/Applicants by Mrs. Makani and Mr. A. K. Nasimire Advocates. It is supported by affidavit of one Tito Kanyamala. The chamber summons shows that it has been brought under O. XXV r. 1 (1) of the Civil Procedure Code [Cap.33 R.E. 2002].

At paragraph 2 of the affidavit in support of the application, the deponent states that the plaintiff/Respondent is a citizen of Canada residing at No. 82 Meadowridge Drive Winnipeg, Manitoba. At paragraph 3, the deponent states that the plaintiff/Respondent is praying for judgment and decree against the Defendants/Applicants to have them compelled to issue him 50% of their respective shareholdings. At paragraph 4, the deponent states that the plaintiff/Respondent has no immovable property in Tanzania.

In their written submissions, counsel for the defendants/Applicants have amplified in great details on what is stated at paragraphs 2, 3 and 4 of Tito Kanyamala's affidavit in support of this application and prayed the court to order the plaintiff/Respondent to deposit shs.18,500,000/= as security for costs incurred or likely to be incurred by them in this suit. Their prayer is grounded

on the fact that the defendants/Applicants have engaged two lawyers to represent them and on the fact that the share capital of 1<sup>st</sup> defendant is shs.4,000,000/= and that the share capital of the 2<sup>nd</sup> defendant is shs.3,000,000/=. They submitted that 50% of the value of shares claimed by the plaintiff is shs.3,500,000/= and that the suit between the parties involves many issues. They concluded their submissions with an additional prayer for costs of this application.

Counsel for the plaintiff/Respondent Mr. Mpoki submitted that the Respondent is conducting business in Tanzania and has properties. He said that the Respondent is the majority share holder in a company registered in Tanzania which is called KBT (Discoveries Group (T) Ltd ) and that he is the president of that company which has several mining plots in Tanzania. He said, shares are properties within the meaning of O.XXV r. 1 (1) of the Civil

Procedure Code [Cap.33 R.E. 2002]. He argued that as the plaintiff/Respondent has properties in Tanzania, there is no need to require him to furnish security for costs in this suit.

Mr. Mpoki further submitted that the plaintiff's/Respondent's claim is not based on a claim for recovery of money but seeks for a declaratory judgment. For this reason, he said that the fees to be charged will be on the lower side.

Furthermore, Mr. Mpoki submitted that as two counsel are jointly representing the defendants/Applicants, it is only one of them who is entitled for costs and that the costs of the suit which will be incurred cannot exceed shs.3,000,000/=. He argued that under such circumstances, shs.18,500,000/= which is applied for as security for costs is on the higher side, unrealistic and unreasonable.

I have gone through the pleadings filed by the plaintiff/Respondent and gathered that his physical address

is at Meadow Ridge Drive, Winnipeg Manitoba Canada. This is in accordance with annexure A to the plaint which is a letter written to him by one Muganyizi Lutagwaba in January, 2005. In addition to that, I have gathered that his address in Tanzania is in the care of Mpoki & Associates, Advocates P.O. Box 14232 Dar es Salaam. From what I have gathered above, it is obvious that the plaintiff/Respondent is residing out of Tanzania.

Although Mr. Mpoki submitted that the plaintiff/Respondent is a President of a Company known as KBT (Discoveries Group (T) Ltd ), his plaint does not so indicate. Paragraph 1 of his plaint simply shows that he is a businessman carrying on business of Promotion and Finance. In addition to that, although Mr. Mpoki submitted that the plaintiff/Respondent has a majority of shares in the aforesaid company no copy of his share certificate or the Memorandum of Association of the aforesaid Company is

annexed to his plaint. This means that Mr. Mpoki's submission that the plaintiff/Respondent has a majority of shares in the said Company and that he is a President of that Company has no proof to rely on.

I therefore agree with counsel for the defendants/Applicants that as the plaintiff/Respondent is residing out of Tanzania and has no immovable property within Tanzania, this is a fit case to order him to deposit security for costs that have already been incurred and that are likely to be incurred by the defendants/Applicants in this suit. However, I do agree with counsel for the plaintiff/Respondent that shs.18,500,000/= which are applied for by the defendants/Applicants as security for costs is on the high side. Moreover, counsel for the defendants/Applicants have not indicated as to how much costs have so far been incurred by the defendants in this suit and how much costs are likely to be incurred by them.

Mr. Mpoki for the plaintiff/Respondent submitted that costs which are likely to be incurred by the defendants/Applicants in the suit is shs.3,000,000/= I have no reason to disagree with him.

In my opinion as counsel for the defendants/Applicants have not indicated the total amount of costs that have so far been incurred by their clients in this suit and as they have not indicated the amount of costs that are likely to be incurred by them, I order the plaintiff/Respondent to pay only the following amounts as security for costs:-

*(a) Tshs.4,500/= which were incurred by the defendants/Applicants as court fees for filing their joint written statement of defence.*

*(b) Tshs.1,500/= which were incurred by them as fees for filing the chamber application.*

*(c) Tshs.1,500/= which were incurred by them for filing their written submissions in arguing this application.*

*(d) Tshs.1,500/= which were incurred by them as fees for filing their rejoinder to the plaintiff's/Respondent's written submissions in reply to their written submissions in chief for this application.*

*(e) Tshs.3,000,000/= which I think are likely to be incurred by them.*

So, the plaintiff/Respondent has to pay a total sum of Tshs.3,009,000/= as security for costs in this suit. The said amount should be paid by bankers cheque within one month from today. I so order under O. XXV r. 1 of the Civil

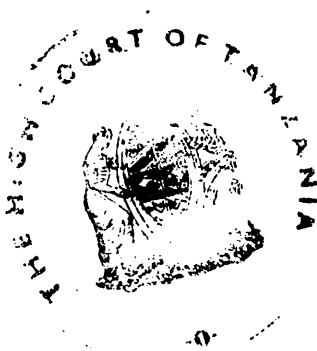
Procedure Code [Cap. 33 R. E. 2002]. Thus, I grant this application but I order that each party should bear its own costs.

  
A. Shangwa

**JUDGE**

20/11/2007

Delivered in open court this 20/11/2007



  
A. Shangwa

**JUDGE**

20/11/2007