

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 57 OF 2021

(Originating from Civil Case No. 173 of 2020)

EVEREST FREIGHT LIMITED.....APPLICANT

VERSUS

SERIN OTOMOTIV SANAYI TICA RET A.S.....RESPONDENT

RULING

MRUMA,J.

This is an application by chamber summons made under Order XXV Rules 1(1) and 2 (1) and section 95 of the Civil Procedure Code seeking for the following orders:

- i. That the Respondents furnishes security for costs sufficient for the payment of all costs incurred.
- ii. Costs incurred and/ or likely to be incurred by the Applicant in Civil Case No. 173 of 2020.
- iii. Costs of the Application and

- iv. Any such order (s) that this honourable court may deem fit to grant.

The grounds of this application is contained in the affidavit in support.

The affidavit is sworn by Mr. Mrosso of Lexcion Attorney Law Company, who represents the Applicant/ Defendant.

Mr. Jimmy Mrosso in his affidavit evidence states the Respondent is a foreign corporation and owns no immovable property or business places within the boundaries of the United Republic of Tanzania

It is further statement of the counsel for the Applicant that the Respondent is incorporated in the Republic of Turkey. He contends that as the Respondent is claiming the sum of USD 313, 300.00 she should be ordered to deposit as security for costs at least two Million United State Dollars.

The application was opposed by the Respondent through the counter – affidavit deponed by Emmanuel Njema, advocate for the Respondent.

Counsel were ordered to file written submissions in support of their respective cases. Counsel for the Applicant complied. Counsel for the

Respondent did not. The only issue for determination is whether the Respondent should furnish security for costs.

Rule 1(1) Order XXV of the Civil Procedure Code under which this application is premised provides;

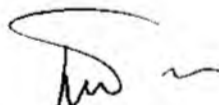
"Where at any state of a suit, it appears to the Court that a sole Plaintiff is.....residing outside and that such plaintiff does not possess any sufficient immovable property within Tanzania other than the property in suit the court may..... On the application of any defendant order the plaintiff.....within time fixed it, to give security for the payment of all costs incurred or likely to be incurred by any defendant. "

In Civil litigations the usual position is that the unsuccessful party may be ordered to pay costs to the successful party. While the Defendant may be confident of their ability to defend the claim, he may nevertheless have concerns about potential difficulties in seeking to recover his costs provided for in any order against the Plaintiff. The main

propose of security for costs order, therefore is an interim remedy to alleviate that concern by requiring the plaintiff to pay money into court or to provide other form of security as pre- condition to being able to continue with the claim. That notwithstanding, security for costs is not a bar or shield against genuine and real claim by a foreigner or a stranger.

As the Respondent/ Plaintiff did not file her submissions to substantiate her assertions in the affidavit, I take it that the application is not seriously challenged. I accordingly grant it and make the following orders;

- The Respondent is to deposit in this court USD 9, 399.00 or bank guarantee worth that amount which is 3% percent of the amount claimed in the plaint within 30 days of this order.
- Should she fail to comply the suit will be dismissed.
- Each party will meet the costs of this application.



A. R. Mruma

Judge

3/8/2022

3/8/2022

Coram : Hon. A. R. Mruma,J.

For the Applicant: Mr. Roman Selasin Lamwai for Advocate Jema Mrina
for the Applicant.

For the Respondent: Absent

Cc: Delphina



A. R. MRUMA

JUDGE

3/8/2022