

**IN THE HIGH COURT FOR ZAMBIA
2010/HPC/0519 AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

BETWEEN:

**JUMANS INTERNATIONAL (PTY) LIMITED
PLAINTIFF**

AND

**G4S SECURITY INTERNATIONAL LIMITED
DEFENDANT**

**BEFORE THE HON. MR. JUSTICE C. KAJIMANGA IN CHAMBERS THIS
31ST DAY OF JANUARY, 2012**

FOR THE PLAINTIFF: N/A

FOR THE DEFENDANT: Mr. E. Mwitwa, Messrs Musa Mwenye
Advocates

R U L I N G

This is an application by the Defendant for an order that the Plaintiff gives security for costs. It is supported by an affidavit sworn by one Eddie Kalela Mwitwa, counsel for the Defendant in which he deposed that on 10th October, 2011 this Honourable Court delivered its Ruling in which it ordered, inter alia, costs to the Defendants which are to be taxed in default agreement. On 25th October, 2011 the Defendant's advocates wrote to the Plaintiff's advocates demanding payment of their client's costs (see exhibit "EKM1"). Due to the non response from the Plaintiff, the Defendant is in the process of having the costs taxed by the Taxing Master.

The affidavit also disclosed that on 12th December, 2011 the Plaintiff filed into court an application for review of the Ruling referred to above and on 19th December, 2011 the Defendant filed its affidavit in opposition. The Plaintiff's application for review is yet to be determined by this Court and the deponent verily believes that there are reasonable prospects that the Plaintiff may not be granted the said application and may be ordered to pay the Defendant's costs incidental to the application.

The affidavit in support further disclosed that from the print out the deponent obtained from the Patents and Companies Registration Agency (PACRA) on 11th December, 2011 it appears to the deponent that the Plaintiff is principally incorporated in the Republic of South Africa but also registered in Zambia as foreign company whose physical place of address in partly indicated as 2A Stewort Drive, ME Discover Building, East London, 8201 (see exhibit "EKM2"). The said print out from PACRA indicates that the director is one Pius Maambo but all the affidavits filed into court on behalf of the Plaintiff are deposed to by one Justine Maxwell Nsanzya who stated that he was the managing director of the Plaintiff company and that he resides in Pretoria, in the Republic of South Africa at 5016 Woodmill Drive, Golf Estate Pretoria as per the affidavit filed on behalf of the Plaintiff dated 12th December, 2011 in relation to the application for review of the Ruling dated 10th October, 2011 and particularly paragraphs 1 to 3 thereof.

The deponent believes that the Plaintiff primarily conducts its business in South Africa and may have no physical address in Zambia. In view of the fact that the Plaintiff is a foreign company with a registered office seemingly in the Republic of South Africa, it would be difficult to recover the costs which the court may award to the Defendant in relation to this matter. The deponent believes that this is a proper matter for the Court to exercise its discretion and order the Plaintiff to give security for costs in the sum of at least not less than K50,000,000.00 especially that in the ruling of 10th

October, 2011, the Honourable Court ordered the Plaintiff to bear the Defendant's costs. The deponent further believes that it would be reasonable to order the Plaintiff to pay the said sum into court before the determination of the Plaintiff's application for review of the Ruling dated 10th October, 2011.

A perusal of the record suggests to me that the Plaintiff did not file an affidavit in opposition. This application is made pursuant to order 40, rule 7 of the High Court Rules Chapter 27 of the Laws of Zambia which reads:

“The Court or a Judge may, on the application of any defendant, if it or he sees fit, require any Plaintiff in any suit, either at the commencement or at any time during the progress thereof, to give security for costs to the satisfaction of the Court or a Judge, by deposit or otherwise, or to give further or better security,... for costs of any particular proceeding undertaken in his interest.”

Similarly, Order 23/O/2 of the Rules of the Supreme Court (white Book) 1999 edition provides, inter alia, that:

“The Court has a discretionary power, at any stage of the proceedings, to order a person in the position of the Plaintiff to give security for his opponent's costs.”

The Court was also referred to Order 23, rule 1 of the White Book which reads:

“Where, on the application of a defendant to an action or other proceedings in the High Court, it appears to the Court -

(i) That the Plaintiff is ordinarily resident out of the jurisdiction ... then, if, having regard to all circumstances of the case, the Court thinks it just to do so, it may order

the Plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just."

It was contended in the Defendant's skeleton arguments that as shown in its affidavit, the Plaintiff is a foreign company with a registered office seemingly in the Republic of South Africa with no registered physical address in Zambia, thus ordinarily out of the jurisdiction of this Court. It was submitted that in line with the authorities cited above this Court has power to order the Plaintiff to give security for the Defendant's costs. The Defendant accordingly prayed that the Court grants the Defendant's application for an order to give security for costs in the sum of at least K50,000,000.00 and that no further application should be taken out by the Plaintiff in this matter until such costs are paid. The Defendant further prayed that the Plaintiff's application for review of this Court's Ruling of 10th October, 2011 should not be determined until after the determination of this application.

I have considered the affidavit evidence, skeleton arguments and authorities cited. It is clear from the affidavit evidence that the Plaintiff company is ordinarily resident out of the jurisdiction of this Court. As the Defendant's application is not opposed, the Plaintiff has not produced any evidence that notwithstanding that it is ordinarily resident out of this Court's jurisdiction, it has assets within that jurisdiction that would be used to satisfy costs that may be awarded to the Defendant. I am therefore satisfied that this is a proper case where the Court can exercise its discretion to grant an order for security for costs.

For the reasons stated above, it is ordered that the Plaintiff shall pay into Court security for costs in the sum of K50,000,000.00. It is further ordered that pending such payment no further application shall be made by the Plaintiff, including the determination of its application for review of this Court's Ruling of 10th October, 2011.

DELIVERED THIS 31ST DAY OF JANUARY 2012

C. KAJIMANGA
JUDGE