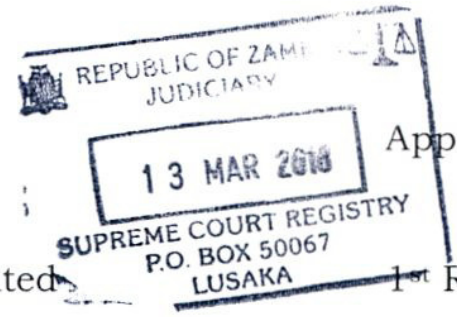
IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Civil Jurisdiction)

APPEAL NO. 103/2015
SCZ/8/127/2015



BETWEEN:

Peony Zambia Limited — Appellant

And

Shalom Bus Services Limited — 1st Respondent

Attorney General — 2nd Respondent

Coram: Hamaundu, Kaoma and Kabuka, JJS

On 6th March, 2018 and 13th March, 2018

For Appellant: Mr. M. Chitundu – Barnaby & Chitundu Advocates

For 1st Respondent: Mr. N. Yalenga – Nganga Yalenga & Associates

For 2nd Respondent: N/A

JUDGMENT

Kaoma, JS delivered the Judgment of the Court.

Cases referred to:

1. **Keen Exchange (Holding) Company v Ingrid Andrea Loiten Investment Bank Plc (2009) Z.R. 343**
2. **Glocom Marketing Ltd v Contract Haulage Ltd- 1998/HP/787**
3. **Isaac Lungu v Mbewe Kalikeka – Appeal No. 114/2013**
4. **Lindsay Parkinson and Company Ltd v Triplan Ltd (1973) 2 All E.R. 273**

Legislation and works referred to:

1. **High Court Rules, Cap 27, Order 40 rules 6, 7 and 8**
2. **White Book, 1999 edition, Order 23 rule 1**
3. **Companies Act, Cap 388, section 190 (1)(a)**

This is an appeal against a ruling of the High Court delivered on 16th April, 2015 by which the court ordered the appellant to pay the sum of K200,000.00 as security for costs.

The genesis of this matter is that the 1st respondent was the registered proprietor of the land known as Stand No. 36357 Lusaka and holder of certificate of title No. 84112 issued on 20th February, 2009. On 12th May, 2011 the appellant applied to the Ministry of Local Government and Housing for the same plot thinking that the plot had never been created or numbered. The Ministry of Local Government and Housing approved the application and later submitted the approved application and site plans for the said plot and others, to the Commissioner of Lands, for preparation of offer letters and number and or re-numbering of the plot(s).

Later the Commissioner of Lands offered the appellant the approved plot which was renumbered as Stand No. 38569 at a consideration fee of K2 499.84. On the same date the appellant accepted the offer by paying the required fee. On 26th April, 2013 the Lusaka City Council demanded the payment of K7 128.82 as service charges. The payment was made timeously and on 29th May, 2013 the appellant was issued with a certificate of title.

Afterward, the appellant discovered that the 1st respondent was constructing boundary walls and burying ditches on the plot and claimed ownership. According to the appellant, preliminary inquiries made with the office of the Surveyor General revealed that the diagram for the 1st respondent's property was not for Stand No. 36357 but for some other property; and that the Surveyor General's office did not frame the diagrams for the 1st respondent's property. The appellant suspected that the survey diagram was forged.

On 25th June, 2013 the appellant issued a writ of summons seeking against the respondents a number of declarations, effectively claiming that it was the sole registered and legitimate owner of Stand No. 38569; that the 1st respondent's plot was not situated at Stand No. 38569; and that the diagram for the 1st respondent's plot was not duly issued by the Surveyor General and was null and void. The appellant also claimed for vacant possession of the plot and damages for trespass.

In its defence, the 1st respondent pleaded that it was the owner of Stand No. 38569 and denied that the appellant's plot was situated at the same location. On the other hand, the 2nd respondent admitted having offered the disputed plot to the

appellant and issued certificate of title No. 220451 but denied the rest of the s claims.

When the matter came up for trial, counsel for the appellant informed the court that they had received representations from the 2nd respondent that they attempt an ex curia settlement. By consent of the parties, the matter was adjourned. On the next return date, counsel for the 2nd respondent revealed that the parties had agreed that the appellant would be offered alternative land but they had not filed a consent judgment. By consent, the matter was again adjourned to allow the parties file a consent judgment.

When the parties next appeared before the Judge, counsel for the appellant confirmed that the substantive dispute had been resolved; and that what remained to be resolved was the issue of costs and the appellant had since filed an application for settlement of issues. The application was heard later and the position taken by the appellant was that since the matter had been resolved without a trial, each party should bear its own costs.

The 2nd respondent agreed with the position taken by the appellant and referred the court to **Order 40 Rule 6** of the **High Court Rules, Cap 27** which gives power to the court to award and

apportion costs and to **Order 62 rule 9** of the **White Book, 1999** edition, which speaks to matters to be taken into account in exercising the discretion on costs. The 2nd respondent also urged the court to take into consideration the discussions between the appellant and 1st respondent concerning costs. However, the 1st respondent insisted that the appellant must be condemned in costs.

In a ruling dated 27th January, 2015 the court rejected the appellant's prayer that each party bears own costs and ordered the appellant to pay the 1st respondent a sum of K50,000.00 as costs and to pay costs to the 2nd respondent to be taxed in default of agreement. Whilst accepting that the matter had been resolved, the court took the view that the appellant's suit against the 1st respondent was ill-conceived; that the appellant's pleadings did not disclose a cause of action against the 2nd respondent; and that unnecessary costs were incurred by the other parties.

Later, the appellant applied for leave to appeal insisting that the matter having been resolved ex curia, each party ought to have met its own costs and that the court dealt with the application for costs as though the matter had been settled on the merit by

referring to the pleadings and awarded costs to the 2nd respondent who never prayed for costs.

On 15th April, 2015 the court delivered two rulings. In one, it dealt with the application for leave to appeal. Though the court was not convinced of the prospect of success of the proposed appeal, it granted leave on the basis of what it termed "**in the interest of justice and for the sake of progress in the matter so that it can have a logical conclusion**". In the second ruling, the court stayed the ruling of 27th January, 2015 pending the determination of the appeal on the same basis of "**interest of justice**".

Meantime, the 1st respondent had applied under **Order 40 rule 7** of the **High Court Rules** for an order that the appellant pays a sum of K200,000.00 security for costs pending outcome of the matter. The affidavit in support disclosed that the 1st respondent had issued a writ of fieri facias to recover the awarded costs of K50,000.00; and that the Sheriff had failed to execute the writ as the appellant did not carry on business at their registered address. It was also disclosed that later attempts to establish where the appellant carried on business proved futile; and that the registered shareholders and directors of the appellant are all foreign nationals.

Further, it was deposed in the affidavit that the appellant had applied for leave to appeal and wished to use and abuse the court process to unjustly avoid and or delay paying the awarded costs; and that the 1st respondent would be left with no recourse should the shareholders and directors of the appellant leave the country as the registered addresses of their company were false.

In its affidavit in opposition, the appellant stated that it had the means to meet the respondents' costs as it had properties whose value exceeded K1,000,000.00. Whilst admitting that the shareholders and directors of the company are all foreign nationals, it was deposed that the company is a Zambian registered company and that the appellant did not wish to abuse the court process but was of the view that the appeal had real prospects of success.

At the hearing of the application the 1st respondent relied on the affidavit in support and urged the court to exercise its powers under **Order 40 rules 7** and **8** of the **High Court Rules** and order that a sum of K200,000.00 be paid as security for costs and that the intended appeal be stayed pending the payment of the security.

The appellant also relied on the affidavit in opposition and cited the case of **Keen Exchange (Holding) Company v Ingrid**

Andrea and another[1] where the High Court held that where a party has assets within the jurisdiction, an order for payment of security for costs should not be granted.

In reply, counsel for the appellant submitted that **Order 40 rule 7** does not make it mandatory that the court can only grant the order as regards foreign nationals or companies; that it was undisputed that the information furnished at the Patents and Companies Registration Agency (PACRA) was false; that the appellant had not disclosed to the court where it operated from; and that the certificate of title exhibited by the appellant was for property demised on 19th January, 2015 and the alleged value in excess of K1,000,000 had not been proved to the court.

In the ruling the subject of this appeal, the court below found that this was a proper case in which to give security for costs and ordered security in the sum of K200,000.00 and in accordance with **Order 40 Rule 8** of the **High Court Rules**, stayed the appeal pending payment of security for costs into court and awarded the costs of the application to the 1st respondent.

In reaching the above decision, the court took into account all the circumstances of the case, particularly, the fact that the 1st

respondent was seeking an order for security for costs after a failed execution of a writ of fieri facias due to the appellant having given false information about its registered office of business. The court also noted that the 1st respondent's fears that the appellant may flee the country without paying the costs ordered by the court and costs of the failed execution were compounded by the fact that all the appellant's shareholders and directors were foreigners.

The court was alive to the appellant's argument that it was a Zambian registered company with properties in excess of K1 million and as such could not fail to pay the 1st respondent's costs. But, the court noted that the appellant had not challenged the allegation that it gave false information in respect of its registered office. The court opined that that may present a problem if execution could fail on account of officers being unable to locate the appellant's registered office because of false information given to PACRA.

The court further took the view that **Order 40 rule 7** of the **High Court Rules**, is not restricted to foreign nationals who may flee or are likely to flee the jurisdiction of the court, but is applicable to any plaintiff in any suit, either at the commencement

or any time during the proceedings that the Court or Judge may deem fit to give security for costs to its satisfaction.

Dissatisfied with the decision, the appellant filed this appeal advancing four grounds as follows:

1. **The Court below erred in law and in fact when it failed to consider that the appellant had a property within the court's jurisdiction whose value is even more than the security for costs prayed for and granted in the sum of K200,000.00.**
2. **The Court below erred and misdirected itself in law and in fact when it awarded costs of the application for security for costs to the 1st defendant which were to be paid before the hearing bearing in mind that there was a pending appeal against the Ruling of the High Court of 27th January, 2015 which gave rise to the application for security for costs and costs awarded therein.**
3. **The court below erred and misdirected itself when it failed to appreciate that the registered office of a company is only for purposes of serving documents and not necessarily operating or trading as a company can trade from a different place from its registered office.**
4. **The court below erred and misdirected itself both in law and in fact when it failed to appreciate that the appellant being a Zambian Company needed not pay for security for costs despite its Directors being non-Zambians.**

Counsel for the appellant had filed heads of argument together with the record of appeal. On 27th February, 2016 the appellant obtained leave to amend the memorandum of appeal and filed an amended memorandum of appeal on 10th November, 2016 adding an additional ground alleging that the court below erred in law

when it awarded an excessive sum of K200,000.00 as security for costs contrary to well established law on quantum for security.

However, no heads of argument were filed with the amended memorandum of appeal and counsel for the appellant relied on the initial heads of argument which do not address the additional ground. Hence, we deem the additional ground as abandoned and we shall determine the appeal on the basis of the initial grounds.

The gist of the appellant's arguments in ground 1 is that the court below should not have condemned it to pay security for costs because it had registered in its name a property under Stand No. LN-385-13 Lusaka situate in Mass Media whose value was far in excess of the K200,000.00 the court ordered for security and that a copy of the title for the property is on the record of appeal.

To buttress the argument, counsel for the appellant cited the case of **Keen Exchange (Holding) Company v Ingrid Andrea Loiten Investment Bank Plc**[1] referred to in the court below and the case of **Glocom Marketing Limited v Contract Haulage Limited**[2] where, he argued, the court upheld the same principle. We were urged to set aside the order for security in order for the matter to proceed to hearing.

In ground 2, it was argued that the appellant is aware of the laid down principle on costs, that costs are in the cause which is re-affirmed under **Order 40 rule 6** of the **High Court Rules**. According to counsel, this however, is the general position of the law which the court can depart from when circumstances demand so and in this case the court should have departed from the position that costs follow the event on the application for security.

It was further contended that as there is a pending appeal against the ruling of 27th January, 2015 the court ought to have ordered that costs be in the cause. That it is unjust to condemn the appellant to bear the costs of the application for payment of security before the ruling of 27th January, 2015 is determined by this Court. We were implored to order that the costs of that application follow the event.

It was also the appellant's submission that the further Order that costs be paid before the appeal is heard will not meet the aims of justice but will merely prevent the appellant from bringing its appeal against the respondents and thereby defeat the cause of justice; and that an order for costs must not be used to prevent

parties from appealing to the court. We were invited to revisit the ruling and order that costs be in the cause.

In respect of ground 3, we were referred to **section 190 (1)(a)** of the **Companies Act, Cap 388 of the Laws of Zambia** which stipulates that the registered office of the company is the physical address of which was notified in the application for incorporation. It was argued that this is an office to which all documentation meant for the company is to be addressed and that the said office need not necessarily be one where the company operates from.

It was contended that it is a misdirection for the court to hold that since the appellant was not trading at the registered office then it gave false information to the Registrar of Companies; and that the fact that the appellant was not found at the registered office does not mean it is not operational in the country.

In ground 4, we were again referred to the case of **Glocom Marketing Ltd v Contract Haulage Ltd**[2] where it was held that where a foreigner institutes a legal action, the court may order that security for costs be paid into court. It was argued that this principle of law is also found in **Order 23 Rule 1** of the **White Book**

1999 edition and that this is the authority on which the courts order foreigners to pay security for costs.

It was contended that it may appear that the fact that all the directors of the appellant are non-Zambian is the other reason the appellant was condemned to pay the security for costs. That while the directors may be non-Zambian, it is not directors who are the parties to the action but the company they incorporated in Zambia; and that being a Zambian company the appellant is exempted under **Order 23 Rule 1** from payment of security for costs. We were invited to set aside the order for payment of security with costs.

The 1st respondent did not file its heads of argument, although on 27th February, 2018 counsel for the 1st respondent filed a supplementary record of appeal on behalf of the appellant. His application for leave to adopt the heads of argument filed by the 2nd respondent or to file heads of argument out of time was rejected as counsel did not explain to us why he failed to file heads of argument before the hearing of the appeal. On their part, the 2nd respondent filed heads of argument on 26th February, 2018 addressing the initial four grounds of appeal but did not attend the hearing of the appeal having filed a notice of non-attendance.

In response to ground 1, counsel for the 2nd respondent quoted **Order 40 Rule 7** of the **High Court Rules**, pursuant to which the application for security for costs was made. Counsel then contended that the application was made upon the 1st respondent's discovery that the appellant did not carry out its business at its registered address. He also cited **Order 23 Rule 1(1)** of the **White Book** which deals with the circumstances in which the Court may, on an application made by a defendant, order security for costs.

It was further submitted that all attempts to establish where the appellant carried on their business proved futile, and that the court below was on firm ground when it granted the application for security in the sum of K200,000.00.

In response to ground 2, counsel cited **Order 40 Rule 6** of the **High Court Rules** which stipulates that the costs of every suit or matter and of each particular proceeding therein are in the discretion of the Court or Judge. Counsel placed emphasis on the proviso which states that the Court '**shall not**' order the successful party to pay to the unsuccessful party the costs of the whole suit. It was argued that as the 1st respondent was successful in its application for security, the court rightly awarded it the costs.

In reaction to ground 3, counsel for the 2nd respondent submitted that the appellant's argument that the registered office need not necessarily be one where the company operates from, cannot stand, as the law expressly provides in **section 190 (1)(a)** of the **Companies Act** that: "the registered office of the company is the place the physical address of which was notified in the application for incorporation."

As to ground 4, counsel for the 2nd respondent accepted as common ground that the appellant is a Zambian registered company but argued that from **Order 23 Rule 1** of the **White Book**, the fact that a plaintiff is not ordinarily resident within the jurisdiction is not the only basis upon which an order for security for costs may be granted; and that the court has the discretion to make an order for security "... if, having regard to all the circumstances of the case, the court thinks it just to do so."

It was submitted that the circumstances of the case, namely the discovery that the appellant was not operating from its registered office and that none of its directors or shareholders were Zambian, warranted the court to make the order for security. We were urged to sustain the order for security for costs, with costs.

We have considered this appeal and the arguments by learned counsel. In our view, the main issue to decide in this appeal is whether or not the court below properly exercised its discretion to order payment for security for costs. For convenience, in determining this question, we shall deal with grounds 1, 3 and 4 first and end with ground 2. **Order 40 Rule 7** of the **High Court Rules** provides that:

> **"The Court or a Judge may, on the application of any defendant, if it or he thinks fit, require any plaintiff in any suit, either at the commencement or 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, and may require any defendant to give security, or further or better security for the costs of any particular proceeding undertaken in his interest" (underlining ours for emphasis only).**

It is clear from this provision that security for costs can be ordered against any plaintiff in any suit. As stated by the court below, this provision is not restricted to foreign nationals or foreign companies who may flee or are likely to flee from the jurisdiction of the court. However, **Order 23 Rule 1** of the **White Book** deals with the circumstances in which the Court may, on an application made by a defendant, order security for costs '**if having regard to all the circumstances of the case, it thinks it just to do so**'.

Indeed, in the case of **Keen Exchange (Holding) Company v Ingrid Andrea Loiten Investment Bank Plc**[1], the High Court held, among other things, that in terms of **Order 23 Rule 1** the defendant is required to prove that the plaintiff is ordinarily resident out of the jurisdiction, and will not be able to pay the costs of the defendant if ordered to do so; and that if there is property in the country which can be reasonably be regarded as available to meet the defendant's right to have his costs paid, then there would be no order for costs.

We had the opportunity to discuss **Order 23 Rule 1** of the **White Book** in the case of **Isaac Lungu v Mbewe Kalikeka**[3] which was heavily relied upon by counsel for the appellant. In terms of that Order, the circumstances in which the court might make an order for security for costs include where: (a) the plaintiff is ordinarily out of the jurisdiction, or (c) the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated, or (d) the plaintiff has changed his address during the proceedings with a view to evading consequences of the litigation.

As we pointed out in that case, the court has absolute or real discretion in the matter and will act in light of all the relevant

circumstances of the case; meaning, that the court must carefully consider the effect of making such an order, and in the light thereof determine to what extent or for what amount a plaintiff or defendant may be ordered to provide security for costs.

We also referred to the English case of **Sir Lindsay Parkinson & Co Ltd v Triplan Ltd**[4], where Lord Denning MR (as he then was) highlighted the circumstances that the court might take into account on an application for security as follows:

1. **Is the claim bona fide and not a sham?**
2. **Does the claimant have a reasonably good prospect of success?**
3. **Is there an admission by the defendant on the pleadings or elsewhere that money was due?**
4. **Is there a substantial payment into court, or an 'open offer' of payment?**
5. **Is the application for security being used oppressively so as to try to stifle a genuine claim?**
6. **Is the claimant's want of means brought about by any conduct by the defendant, such as delay in payment or doing their part of the work?**
7. **Is the application for security made at a late stage of the proceedings?**

In this case, the appellant has, in ground 1 accused the court of having failed to consider that it had a property within the jurisdiction whose value is more than the security for costs prayed for and granted in the sum of K200,000.00. It is apparent from the ruling that the court below did set out in clear terms, the matters it

took into account when making the order for security for costs, including the fact that the appellant had other property within the jurisdiction. For emphasis, the court put the matter as follows at page 12 lines 5 to 12 of the record:

> **"I noted that Counsel for the plaintiff argued that his client is a Zambian registered company with properties in excess of K1 million and as such could not fail to pay the 1st defendant's costs. However, I also noted that the allegation that the plaintiff gave false information in respect of its registered office was unchallenged. I am of the considered view that that may present a problem if execution could fail on account of officers being unable to locate the appellant's registered office because of false information given to the Patents and Companies Registration Agency (PACRA)".**

Obviously, what persuaded the court below to order payment of security, despite the evidence by the appellant that it had real property whose value was in excess of K200,000.00 and whose certificate of title was produced, was the undisputed fact, that the appellant had not challenged the allegation that it gave false information to PACRA, in respect of its registered office. In our view, this was a very serious allegation which cast doubt on the appellant's credibility but which the appellant failed to impugn. For this reason, we find no merit in ground 1 and we dismiss it.

In ground 3, the appellant accused the court of failing to appreciate that the registered office of a company is only for

purposes of serving documents and not necessarily operating or trading as a company can trade from a different place from its registered office. While this may be true, we reiterate that the court below took into account all the circumstances of the case, together with the fact that the 1st respondent had issued a writ of fieri facias to recover the awarded costs of K50,000.00 but the Sheriff failed to execute the writ as the appellant did not carry on business at its registered address. We note that in fact the appellant's address was not stated in the writ at page 15 of the record of appeal.

Moreover, as argued by counsel for the 2nd respondent, there was affidavit evidence, which again was never controverted that later attempts to establish where the appellant carried on business proved futile. Counsel for the appellant argued, before us that they are not aware of the efforts made by the 1st respondent to establish where the appellant traded from. However, it is quite clear from the record that the appellant made no attempt to disclose to the court, where it operated from, since it did not carry on business at its registered office and it claimed to be operational in Zambia.

The 1st respondent's concern that it may be left without a remedy, which the court below appreciated, was compounded by

the fact that the registered shareholders and directors of the appellant are all foreign nationals but this was not the sole decisive factor; it was simply one of the factors that informed the court's decision and we cannot fault the court below for reaching the decision it did. Therefore, we find that ground 3 also lacks merit.

In ground 4, the appellant argued that this was not a proper case for the court to make an order for security for costs because the appellant is a Zambian registered company. This fact was not in dispute and the 1st respondent has not argued that the appellant is ordinarily out of the jurisdiction. Even so, we repeat that there was no information before the court of where the appellant operated from and the allegation that the appellant gave false information to PACRA in respect of its registered office was never challenged.

In the peculiar circumstances of this case, we agree with the court below that this was a proper case for an order for payment of security for costs and we are satisfied that the court exercised its discretion judiciously. As a result, ground 4 also fails.

We come now to ground 2 which seems to have two limbs. The first limb is that the court below should not have awarded costs of the application for security to the 1st respondent. The second limb is

that the court should not have ordered that costs be paid before the hearing of the appeal.

Regarding the first limb, in terms of **Order 40 Rule 6** of the **High Court Rules**, the costs of every suit or matter and of each particular proceeding therein are in the discretion of the Court. Further, it is trite that an award of costs will generally flow with the result of litigation; the successful party being entitled to an order for costs against the unsuccessful party. This is the meaning of the phrase "**costs follow the event**". In this case, counsel for the appellant invited us to order that the costs of the application for payment of security for costs follow the event.

Concurrently, counsel urged us to revisit the court's ruling on costs and order that costs be in the cause. The phrase "**costs in the cause**" means an award of costs of an interlocutory proceeding to a named party in the cause; e.g., "**costs** to the plaintiff **in the cause**" means that only if the party in whose favour the order is made is later awarded the costs of the action will that party be entitled to the costs of the interlocutory proceedings in issue.

In the present case, the appellant wants the court to order that '**costs follow the event**' and at the same time that "**costs** be

in the cause" which is not possible. The appellant seems bemused over this issue. Clearly, the 1st respondent was forced to apply for security because of matters deposed to in the affidavit in support, which the court below took into account in making the order for payment of security for costs.

We agree that the court could have ordered that '**costs** be **in the cause**' or costs abide the outcome of the appeal. However, as argued by counsel for the 2nd respondent, the 1st respondent had succeeded in its application for payment of security and since the appellant urged us to order that costs follow the event, the court below properly awarded the costs of the particular proceedings to the 1st respondent. Thus, we find no merit in the first limb of ground 2 of this appeal.

Concerning the second limb of ground 2, we are inclined to agree with the appellant that the court below ought not to have ordered that the costs be paid before the hearing of the appeal, mainly because the court had already ordered payment of security and stayed the appeal until security was paid. However, the success of this limb has no effect on the outcome of the appeal.

As submitted by counsel for the appellant, leave to appeal was granted to the appellant on 15th April, 2015 and the next day, the court stayed the appeal until security is paid.

In the **Isaac Lungu**[3] case, we made it clear that a court faced with an application for security will look into the prospects of success of the plaintiff's case or of the appeal; and that the possibility or probability that the appellant will be deterred from pursuing his appeal by an order for security is a sufficient reason for not ordering security. But the burden is on the claimant to show that an appeal has prospects of success and that an order for security would possibly or probably stifle litigation.

In the current case, the supplementary record of appeal shows at page 19 lines 13 to 15 that the court was not convinced that there was prospect of success of the proposed appeal even if it granted leave to appeal. Moreover, the appellant made no effort to show that the order for security would probably have the effect of stifling the appeal. It seems the appellant was more vexed by the order that costs of the application for security must be paid before the appeal was heard. This is clear from the argument by counsel that the said order would not meet the aims of justice but will

merely prevent the appellant from bringing its appeal against the respondents and thereby defeat the cause of justice.

Additionally, even though the 1st respondent did not, in its affidavit in support, give the estimated costs of the appeal, or estimated future costs, or annex a bill of costs (which it was required to do) for the court to determine whether the proposed sum of K200,000.00 was reasonable, the appellant did not, at any stage, in the court below, challenge the amount of security proposed by the 1st respondent, and therefore, cannot be allowed to do so now. Given all the circumstances of the case, we consider the sum of K200,000.00 to be sufficient security and we decline to set aside the order for payment of security.

In view of all the foregoing, we find no merit in this appeal and we dismiss it with costs to be taxed if not agreed.

E.M. HAMAUNDU
SUPREME COURT JUDGE

R.M.C. KAOMA
SUPREME COURT JUDGE

J. KABUKA
SUPREME COURT JUDGE