

IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2016/HPC/0469

BETWEEN:

GEOFFREY WILLIAM GODSON



PLAINTIFF

AND

TRATSWEN LIMITED

1<sup>ST</sup> DEFENDANT

NICHOLAS ACTON

2<sup>ND</sup> DEFENDANT

*Delivered in Chambers before the Honourable Mr. Justice Sunday B. Nkonde, SC at Lusaka this 31<sup>st</sup> day of May, 2018.*

*For the Plaintiff: Ms. L. Hangala of Messrs Victoria Dean Advocates*

*For the Defendants: Mr. B. Sitali of Messrs Buttler & Co. Legal Practitioners*

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## R U L I N G

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LEGISLATION REFERRED TO:

- 1) High Court Rules, Chapter 27 of the Laws of Zambia
- 2) Supreme Court Practice Rules, 1999 Edition



This is a Reserved Ruling on the Defendant's application by way of Summons for Security for costs made pursuant to **Order 40, Rule 7 and 8 of the High Court Rules and Order 23, Rule 1 of the Supreme Court Practice Rules.**

The application is supported by an Affidavit, sworn by the 2<sup>nd</sup> Defendant and Skeleton Arguments.

In essence, the Defendant's application is that an Order for security for costs, in the amount of USD50,000.00 be given by this Honourable Court as the Plaintiff's place of residence is in Cape Town, South Africa.

In opposing the application, the Plaintiff deposed that he is an established resident of Zambia and holder of a valid Residency Permit issued by the department of Immigration (Copy of the said permit has been exhibited to the Affidavit in Opposition). The Plaintiff has averred that the reason for his absence from the jurisdiction is due to his poor health which has worsened, with the latest ailment having had him undergo surgery.

Further, the Plaintiff has stated that in addition to being an established resident of Zambia, he owns 36,000 shares in a Company called Real Estate Investments Zambia.



With regards to the amount of security, the Plaintiff's assertion is that the amount being claimed is excessive and would stifle his claim.

In terms of the law regarding Security for Costs, the following provisions are pertinent to this case:-

***Order 40 Rule 7 of Cap 27 HCR – “ 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, and may require any Defendant to give security, or further or better security, for the costs of any particular proceeding undertaken in his interests.”***

***Order 40 Rule 8 of Cap 27 HCR – “Where the Court or a Judge orders costs to be paid, or security to be given for costs by any party, the Court or a Judge may, if it or he think fit, order all proceedings by or on behalf of that party in the same suit or proceeding, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of***



*enforcing payment.”*

*Order 23 Rule 1 RSC – “(1) There, on the application of a Defendant to an action or other proceeding in the High Court, it appears to the Court –*

- a) That the Plaintiff is ordinarily resident out of the jurisdiction, or*
- b) That the Plaintiff (not being a Plaintiff who is suing in a representative capacity) is a nominal Plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the Defendant if ordered to do so, or*
- c) Subject to paragraph (2) that the Plaintiff’s address is not stated in the writ or other originating process or is incorrectly stated therein, or*
- d) That the Plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation, then if, having regard to all the 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 proceeding as it thinks just.*

*(2) The Court shall not require a Plaintiff to give security by reason only of*



*paragraph (1)(c) if – he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.*

*(3) The references in the foregoing paragraphs to a Plaintiff and a Defendant shall be construed as references to the person (howsoever described on the record) who is in the position of Plaintiff or Defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.”*

Now, the Order for security for costs is one that is granted at the Court's discretion and in exercising this discretion, the Court will look at all the circumstances of the case.

These circumstances include a) the Plaintiff's bona fides, and his prospects of success; b) whether the Defendant has admitted on the pleadings or anywhere that money is due; c) whether the application for security is being used oppressively e.g to stifle a genuine claim; d) whether the Plaintiff's want of means has been brought about by any conduct of the Defendant, such as delay in doing part of the work; the substantial rights of enforcement of judgment; and the stage of the proceedings at which the application is made.

Having considered the facts of the case as well as the evidence proffered, I find that indeed the Plaintiff is ordinarily resident out of the jurisdiction. The position of the Court in this regard is strengthened not only by virtue of the Plaintiff's



address on the writ but also by the Plaintiff's Affidavit in support of ex-parte Summons for an Order that the Plaintiff gives testimony at trial via audio-visual technology. In the said Affidavit, which is on record of the Court, the deponent clearly stated in paragraph 5 that the Plaintiff is "ordinarily resident in South Africa."

It should follow, therefore, that an Order for security for costs should be made unless the Court is of the view that one of the exceptions applies. One of these exceptions, as earlier mentioned, is where the Plaintiff can prove that he has property within the jurisdiction which can be applied to meet the costs.

The Plaintiff has asserted that he owns 36,000 shares in Real Estates Investments. The veracity of this assertion cannot, however, be ascertained by the Court as no evidence has been tendered to show this.

The above notwithstanding, perusal of the Defence will reveal that the Defendants have acknowledged that the Plaintiff had rendered some money to the 1<sup>st</sup> Defendant. Whether this money was in form of a loan or an investment, is an issue which shall be determined at trial. Suffice to say that there is an admission that an amount of USD250,000 was put into the Defendants' business by the Plaintiff, which amount was also to attract interest.

Therefore, whether the money rendered was a loan or an investment, the Plaintiff is still expected to receive some form of return whether wholly or in part. I am,



therefore, of the view, which is the position I take, that this money, being in excess of the amount of security being requested, can be considered as an asset which can be applied to meet costs in the event the Court awards the same to the Defendants. The fact that this money is in the possession of the Defendants makes it even easier for the Defendants to obtain payment.

For the foregoing reason, the application for security for costs is dismissed with costs to the Plaintiff.

Delivered in Chambers this 31<sup>st</sup> day of May, 2018.



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HON. JUSTICE SUNDAY B. NKONDE, SC  
**HIGH COURT JUDGE**