**Noble Builders (U) Ltd and another v Sandhu**

**Division:** Supreme Court of Uganda at Mengo

**Date of ruling:** 4 March 2004

**Case Number:** 15/02

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**Before:** Mulenga JSC

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Costs – Security for costs – Supreme Court Rules – Rule 100(3) – Circumstances under which*

*security for costs may be ordered in appeal.*

**Editor’s Summary** The respondents petitioned to the High Court for orders to wind up the first applicant and declare the second applicant a delinquent director and the orders sought were granted. The applicants successfully appealed to the Court of Appeal and the High Court decision was set aside with costs to the applicants. The respondents appealed to the Supreme Court. Meanwhile the applicants filed bills of costs were assessed at total of UShs 34 164 400. The applicants filed an application in the appeal to the Supreme Court contending that they would incur further costs if they won in the appeal and prayed for orders *inter alia* that the respondent furnishes further security for costs, past costs and costs of the pending appeal. The respondent lived in Canada and had no assets or business interests in Uganda.

**Held** – It is well settled that the burden lies on the applicant to show sufficient cause why the appellant should furnish further security for costs over and above the amount fixed by the rules. What amounts to sufficient cause is a matter for the Court’s discretion, depending on the circumstances of the case before it. Demonstrable lack of reasonable chances of success for an appeal is sufficient cause. Inability to pay *per se* is not a ground for ordering security for costs; *De Bry v Fitzgerald and another* [1990] 1 All ER 560 distinguished. A defendant should be entitled to security if there is reason to believe that, in the event of his succeeding and being awarded costs, he will have real difficulty in enforcing the order. Application allowed. Further security for costs ordered.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Bank of Uganda v Nsereko and others* civil application number 7 of 2002 (SC)

*Patel v American International Banking Corporation* civil application number 9 of 1989 – **C**

*Uganda Commercial Bank v Multi Constructors Limited* [1994] LLR 260 (SCU) – **C**

***United Kingdom***

*De Bry v Fitzgerald and another* [1990] 1 All ER 560 – **D**

*Porzelack KG v Porzelack (UK) Limited* [1987] 1 All ER 1074 – **D**